Amendments to the Excise Tax Act, the Federal-Provincial Fiscal Arrangements Act, the Income Tax Act, the Debt Servicing and Reduction Account Act and Related Acts

Explanatory Notes

Published by
The Honourable Paul Martin, P.C., M.P.
Minister of Finance

December 1996

Department of Finance Canada   Ministère des Finances Canada

© Her Majesty the Queen in Right of Canada (1996)
All rights reserved

All requests for permission to produce this work or any part thereof shall be addressed to Public Works and Government Services Canada.

Price: $43

Available from the Finance Canada Distribution Centre
300 Laurier Avenue West, Ottawa K1A 0G5
Tel: (613) 995-2855
Fax: (613) 996-0518

Cette publication est également disponible en français.

Cat No.: F2-114/1996E

ISBN-0-660-16733-6

PREFACE

The legislation to which these explanatory notes relate contains amendments to the *Excise Tax Act*, the *Federal-Provincial Fiscal Arrangements Act*, the *Income Tax Act*, the *Debt Servicing and Reduction Account Act* and related Acts. These amendments are intended to implement sales tax measures announced in April and October 1996. In addition, the legislation contains amendments intended to implement the Harmonized Sales Tax in accordance with agreements between the federal government and the governments of Nova Scotia, New Brunswick and Newfoundland and Labrador to harmonize the federal and provincial sales taxes, effective April 1, 1997.

The explanatory notes describe the proposed amendments, clause by clause, for the assistance of Members of Parliament and Senators, as well as taxpayers and their professional advisors.

It should be noted that amendments that are proposed to come into force on December 17, 1990, the day on which the legislation that enacted the Goods and Services Tax received Royal Assent, are described in these notes as having effect as of January 1, 1991, the day on which the tax was implemented.

104-03036/

These explanatory notes are provided to assist in an understanding of the proposed amendments to the *Excise Tax Act*, the *Federal-Provincial Fiscal Arrangements Act*, the *Income Tax Act*, the *Debt Servicing and Reduction Account Act* and related Acts. These notes are for information purposes only and should not be construed as an official interpretation of the provisions they describe.

Table of Contents

PART I - Excise Tax Act

Clause in Legislation	Section of the Excise Tax Act	Topic	Page
1	123	Definitions	15
2	132	Person Resident in Canada	32
3	135	Sponsorships of Public Sector Bodies	33
4	136	Combined Supply of Real Property	33
5	141.01	Input Apportionment Rules	34
6	142	Place of Supply	36
7	142.1	Telecommunication Services - Place of Supply Rules	37
8	145	Partnerships	39
9	148	Small Suppliers	40
10	148.1	Charities and Public Institutions as Small Suppliers	41
11	149	Financial Institutions	42
12	150	Election for Exempt Supplies	45
13	153	Used Tangible Personal Property Trade-Ins	46
14	154	Taxes, Duties and Fees	48
15	155	Non-Arm's Length Supplies	49
16	164	Donations to Charities and Registered Parties	50
17	165	Imposition and Computation of Tax	51
18	167	Supply of Business Assets of Deceased	52
19	169	Required Documentation	53
20	170	Restrictions on Input Tax Credits	53
21	172	Benefits to Shareholders, etc.	54
22	173	Taxable Benefits	55
23	174	Travel and Other Allowances	58
24	175 and 175.1	Reimbursements	60
24.1	Heading	Used Goods	62
25	176	Used Tangible Personal Property	62
26	177	Agents and Auctioneers	66
27	178	Expenses Incurred in Supply of Service	69
28	178.3	Approval for Direct Seller	69
29	178.4	Approval for Distributor	71

Clause in Legislation	Section of the Excise Tax Act	Topic	Page
30	179	Drop Shipments.	72
31	180.1	International Travel	75
32	182	Forfeitures and Extinguished Debt	76
33	183	Seizures and Repossessions	77
34	184	Supply of Real Property to Insurer on Settlement of Claim	82
35	185	Financial Services - Input Tax Credits	85
36	190	Conversion of Real Property to Residential Use	86
37	191	Self-Supply of Real Property	87
38	191.1	Subsidized Residential Complexes	88
39	193	Redemption of Real Property	89
40	198	Capital Property Used in Supply of Financial Services	90
40.1	208	Beginning Use in Commercial Activities	90
41	215.1	Rebate for Returned or Defective Goods	91
41.1	216	Application of Part IX and *Tax Court of Canada Act*	93
42	217	Tax on Imported Taxable Supplies	93
43	219	Preparation of Returns	94
43.1	221	Collection of Tax	95
44	225	Remittance of Tax	95
45	225.1	Net Tax Calculation for Charities	98
46	227	Election for Streamlined Accounting	104
47	228	Calculation, Remittance and Refund of Tax	105
48	230	Overpayment	107
49	230.2	Special GST Credit for Certified Institutions	108
50	231	Bad Debts	109
51	232	Tax Adjustments	111
52	234	Deduction for Rebate	112
53	236	Food, Beverages and Entertainment	112
54	240	Voluntary Registration	113
55	245	Reporting Period of Non-Registrant	115
56	247	Election for Fiscal Quarters	116
57	248	Election for Fiscal Years	117
58	252	Non-Resident Rebate in Respect of Exported Goods	117

Clause in Legislation	Section of the Excise Tax Act	Topic	Page
59	252.1	Rebate of Tax on Accommodation Supplied to Non-Residents	118
60	252.2	Non-Resident Rebate for Short-Term Accommodation	123
61	252.41	Non-Resident Rebate Respecting Installation Services	124
62	253	Employees and Partners	126
63	254	New Housing Rebate	127
64	254.1	New Housing Rebate for Building Only	128
65	255	Co-operative Housing Rebate	130
66	256	Rebate for Owner-Built Homes	131
67	256.1	Rebate to Owner of Land Leased for Residential Purposes	132
68	257	Non-Registrant Sale of Real Property	133
69	259	Public Service Body Rebate	134
69.1	259.1	Rebate for Printed Books	139
70	260	Charity Exports	142
71	261	Rebate of Payment Made in Error	143
72	265	Trustees in Bankruptcy	143
73	267 to 269	Estates and Trusts	144
74	270	Representatives	148
75	Heading	Heading for Subdivision b of Division VII	148
76	272.1	Partnerships	149
77	278.1 and 279	Electronic Filing and Execution of Documents	154
78	296	Assessments	155
79	298	Period for Assessment	158
80	299	Binding Effect of Assessment	160
81	300	Notice of Assessment	161
82	301	Objection to Assessment	161
83	306.1	Appeals	164
84	335	Proof of Return	165
84.1	336	Self-Supply of Residential Condominium Unit by Limited Partnership	165
85	V/I/1	Definition "improvement"	167
86	V/I/6	Exempt Residential Leases or Licences	168
87	V/I/6.1	Lease of Real Property where Exempt Re-Supply	168
88	V/I/7	Exempt Leases of Land or Trailer Park Sites	169

Clause in Legis-lation	Section of the Excise Tax Act	Topic	Page
89	V/I/8.1	Parking Spaces	170
90	V/I/9	Personal Trust	171
91	V/I/13.3	Coin-Operated Washing Machines and Clothes-Dryers	172
92	V/II/1	Definitions relating to Health Services Exemptions	173
93	V/II/4	Air Ambulance Services	175
93.1	V/II/6	Nurses' Services	175
94	V/II/7	Exempt Health Care Services	176
95	V/II/7.1	Dietetic Services	176
96	V/II/12	Psychoanalytic Services	177
97	V/III/1	Definition "vocational school"	177
98	V/III/3	Supplies Through Vending Machines	178
99	V/III/8	Exempt Courses	179
100	V/III/13	Meal Plans	179
101	V/IV/2	Child and Personal Care Services	180
102	V/V.1	Supplies by Charities	180
103	V/VI/1	Definitions	189
104	V/VI/2	General Exemptions for Public Institutions	191
105	V/VI/3 and 3.1	Overriding Volunteer Exemptions	192
106	V/VI/5.1	Bingos, Raffles, etc.	193
107	V/VI/5.2	Bets on Casino Games, Races, Etc.	194
108	V/VI/6 to 8	Direct Cost Exemption for Public Service Bodies	195
109	V/VI/9 and 10	Admissions Not Exceeding One Dollar and Supplies for Nil Consideration	196
110	V/VI/12	Recreational Services	197
111	V/VI/13	Recreational Camps	198
112	V/VI/15	Meal Programs	198
113	V/VI/17	Memberships and Other Supplies by Registered Parties	198
113.1	V/VI/18.1 and 18.2	Registered Parties	199
114	V/VI/20	Supplies by Municipalities and Governments	200
115	V/VI/21 to 24	Municipal Services	202

Clause in Legis- lation	Section of the Excise Tax Act	Topic	Page
116	V/VI/25	Supplies of Real Property by Public Service Bodies	205
117	V/VI/28	Inter-Municipal Supplies	207
118	VI/I/1	Definitions - Prescription Drugs and Biologicals	208
119	VI/I/3	Supply of a Drug	209
120	VI/II/ Heading	Medical and Assistive Devices	210
121	VI/II/1	Definition "practitioner"	210
122	VI/II/2 to 4	Medical Devices	210
123	VI/II/5	Artificial Breathing Apparatus	212
124	VI/II/5.1 and 5.2	Aerosol Chamber and Respiratory Monitor	212
125	VI/II/7 and 8	Zero-Rated Assistive Devices	213
126	VI/II/ 11.1	Orthodontic Appliances	214
127	VI/II/14 and 15	Aids to Locomotion and Patient Lifters	214
128	VI/II/18 to 20	Medical Devices	215
129	VI/II/21.1, 21.2 and 21.3	Extremity Pumps and Catheters	216
130	VI/II/23 and 23.1	Orthotic and Orthopaedic Devices	216
131	VI/II/24	Appliance for Individual with Crippled or Deformed Foot	217
132	VI/II/24.1	Specially Designed Footwear	217
133	VI/II/27	Cane or Crutch	218
134	VI/II/30	Articles Specially Designed for Blind Individuals	218
135	VI/II/33 and 33.1	Guide Dogs	219
136	VI/II/35 to 40	Assistive Devices	219
137	VI/III/1	Basic Groceries	221
138	VI/IV/2	Grains or Seeds and Fodder Crops	224
139	VI/IV/5	Fertilizer	224
140	VI/V/2	Supplies to Unregistered Foreign Carriers	225

Clause in Legislation	Section of the Excise Tax Act	Topic	Page
141	VI/V/2.1	Supplies of Fuel to International Carriers	225
142	VI/V/4 to 6.2	Services to Non-Residents	226
143	VI/V/7	Exported Services	229
144	VI/V/12	Goods Sold to Persons for Delivery Abroad	231
144.1	VI/V/17	Custodial or Nominee Services	231
145	VI/V/22 and 22.1	Postal Services and Telecommunication Services	232
146	VI/V/23	Advisory, Professional or Consulting Services	233
147	VI/VII/1	International Flight	234
148	VI/VII/5	In-Flight Charges	234
149	Vi/VII/15	International Air Ambulance Services	235
149.1	VII/4	Non-Taxable Importations	235

PART II - Excise tax Act - Harmonized Sales Tax Amendments

Clause in Legislation	Section of the Excise Tax Act	Topic	Page
150	123	Definitions	236
151	129	Becoming a Small Supplier Division	243
152	129.1	Small Supplier Divisions	244
153	132.1	Residence	247
154	136	Combined Lease of Real Property	249
155	136.1 to 136.4	Separate Supplies	250
156	141	Intended Use in Commercial or Other Activities	253
157	141.01	Acquisition for Purpose of Making Supplies, etc.	253
158	141.1	Disposition of Personal Property, Inventory, etc.	254
159	144.1	Supply in a Province	254
160	163	Consideration for Portions of Tour Packages	255
161	165; 165.1 165.2	Imposition of Tax under Division II of Part IX	257
162	169	Input Tax Credits	259
163	170	Restriction on Claiming Input Tax Credits	263
164	171	Person Becoming a Registrant	263

Clause in Legislation	Section of the Excise Tax Act	Topic	Page
165	171.1	Taxi Businesses	264
166	173	Taxable Benefits	265
167	174	Travel and Other Allowances	268
168	175	Reimbursement of Employees, Partners or Volunteers	269
169	175.1	Warrantee Reimbursement	269
170	176	Used Returnable Containers	270
171	178.3	Alternate Collection Method for Direct Sellers	271
172	178.4	Alternate Collection Method for Distributors of Direct Sellers	273
173	178.5	Restrictions on Input Tax Credits	275
174	179	Drop-Shipments	275
175	181	Coupons	276
176	181.1	Rebates	277
177	182	Forfeitures and Extinguishment of Debt	278
178	183	Seizures and Repossessions	279
179	184	Transfers to Insurers	280
180	185	Financial Services – Input Tax Credits	281
181	186	Related Corporations	281
182	187	Bets and Games of Chance	282
183	192	Non-substantial Renovations	282
184	193	Real Property Credits	283
185	194	Incorrect Statement	284
186	195	Prescribed Property	284
187	196	Intended And Actual Use	285
188	196.1	Appropriation to Use as Capital Property	285
189	198.1, 198.2	Change in Use; Capital Acquisitions Outside Canada	286
190	199	Capital Personal Property	288
191	200	Ceasing Use of Personal Property	291
192	201	Value of Passenger Vehicle	291
193	202	Input Tax Credit for Passenger Vehicle or Aircraft	293
194	203	Passenger Vehicles	294
195 to 197	206 to 208	Change in Use of Capital Property	295
198	211	Deemed Sale Where Election	296
199	212 and 212.1	Imposition	297

Clause in Legislation	Section of the Excise Tax Act	Topic	Page
200	213.1	Security	299
201	214 and 214.1	Payment of Taxes	299
202	215.1	Rebate for Returned Goods	300
203	Div. IV Heading	Tax on Imported Taxable Supplies	301
204	218 to 218.2	Tax on Imported Taxable Supplies	301
205	Div. IV.1	Property and Services Brought Into a Participating Province	303
206	223	Disclosure of Tax	312
207	225	Net Tax	312
208	225.1	Net Tax of Charity Under Streamlined Accounting Method	313
209	225.2	Selected Listed Financial Institutions	314
210	226	Returnable Containers	318
211	228	Calculation of Net Tax	321
212	229	Restriction	324
213	230	Refund of Payment	325
214	233	Patronage Dividends	325
215	234	Deduction in Respect of Supply in a Participating Province	327
216	235	Net Tax Where Passenger Vehicle Leased	327
217	237	Instalments	328
218	238	Filing by Certain Selected Listed Financial Institutions	330
219	240	Registration Permitted	330
220	252.4	Rebate in Respect of Foreign Conventions	331
221	253	Employee and Partner Rebates	331
222	254	New Housing Rebate	332
223	254.1	New Housing Rebate for Building Only	333
224	255	Co-operative Housing Rebate	335
225	256	Rebate for Owner-Built Homes	336
226	256.1	Rebate to Owner of Land	337
227	257	Non-registrant Sale of Real Property	338
228	259	Public Service Body Rebate	339
229	259.1	No Adjustment of Provincial Component of Tax	342

Clause in Legislation	Section of the Excise Tax Act	Topic	Page
230	261.1 to 261.4	Rebate for Property or Services Removed from a Participating Province	342
231	263	Restriction on Rebate	346
232	269	Distribution by Trust	346
233	272.1	Partnerships	347
234	273	Joint Venture Election	347
235	277.1	Temporary Regulations	348
236	280	Penalty and Interest	349
237	295	Disclosure of Personal Information	350
238	296	Assessments	351
239	298	Period for Assessment	352
239.1	323	Liability of Directors	354
240	337	Goods Returned After 1990	354
241	348 to 363	Division X - Transitional Provisions for Participating Provinces	355
242	364 to 368	Division XI – Tax-Inclusive Pricing	383
243	V/I/2	Sales of Residential Complexes Other Than by Builder	387
244	V/I/3	Sales of Self-built Homes	388
245	V/I/4	Self-built Single Unit Residential Complexes and Residential Condomunium Units	389
246	V/I/5	Self-built Multiple Unit Residential Complexes	389
247	V/I/5.3	Residential Trailer Parks	390
248	V/I/6	Long-term Residential Rents	391
249	V/I/6.1	Residential Leases	391
250	V/I/7	Lease of Land for Mobile Homes, etc.	392
251	V/I/8	Sale of Parking Space	392
252	V/I/8.1	Lease of Parking Space	393
253	VI/VII/1		393
254	VIII to X	Participating Provinces and Applicable Tax Rates; Place of Supply; Non-taxable Property and Services	394
255	123; 141.01; 271; 272	Property Brought Into a Participating Province	426

PART III - Transitional Provisions

Clause in Legislation	Section of the Excise Tax Act	Topic	Page
256		Deregistration of Public Service Bodies	427
257		Small Supplier Divisions	428
258		Charities and Change in Use	428
259		Things Sent By Mail	429
260		Application to Imported Goods	429

PART IV - Federal-Provincial Fiscal Arrangements Act

261	2	Definition "sales tax harmonization agreement"	430
262 to 266	8.2 to 8.7; 32; 34	Sales Tax Harmonization Agreements	430

PART V - Income Tax Act

267	6	Employee Benefits	432
268	12	Automobile Benefits to Partners	433
269	15	Shareholder Benefits	434

PART VI - Debt Servicing and Reduction Account Act

270	5	Payments to Participating Provinces	435

PART VII - An Act to Amend the Excise Tax Act - S.C., 1990, c. 45

271	12	GST Implementation Rules	435

PART VIII - An Act to Amend the Excise Tax Act - S.C., 1994, c. 9

272	4	Free Supplies	436

PART IX - Income Tax Budget Amendment Act - S.C., 1996, c. 21

273	69	*De Minimis* Financial Institutions	437

PART I

EXCISE TAX ACT

This Part contains amendments to the *Excise Tax Act* to implement sales tax measures announced in April and October 1996. In addition, this Part contains technical amendments that clarify and correct the application of the *Excise Tax Act*. Amendments to implement the Harmonized Sales Tax (HST) are contained in Part II which, in some cases, further amends provisions of the Act that are amended by Part I.

Clause 1

Definitions

ETA
123

Subsection 123(1) defines a number of terms that apply for purposes of Part IX of the Act and Schedules V, VI and VII thereto.

For ease of reference, all of the amendments to definitions contained in subsection 123(1) are described below in alphabetical order.

"charity"

The definition "charity" is amended to exclude "public institutions", which are newly defined in subsection 123(1) as persons that are registered charities for purposes of the *Income Tax Act* and are school authorities, public colleges, universities, hospital authorities or persons determined by the Minister of National Revenue to be municipalities for purposes of Part IX of the *Excise Tax Act*. After 1996, all references to a "charity" will no longer include a reference to a public institution. Therefore, a provision that applies to a "charity" will not apply to a public institution unless otherwise specifically provided. Many of the provisions that apply to these organizations are in fact amended to make specific reference to "public institutions" and thereby maintain their current application.

For example, section 2 of Part VI of Schedule V, which contains the existing general exemptions for supplies by a charity, is amended to apply only to "public institutions". New Part V.1 of Schedule V is added to set out the exemptions for charities, and that Part does not apply to public institutions.

The amended definition "charity" applies as of January 1, 1997. It also applies in relation to supplies made before that day for which consideration becomes due, or is paid without having become due, on or after that day.

"commercial activity"

The term "commercial activity" refers to those activities that are undertaken by a person that bring the person within the scope of the Goods and Services Tax (GST) system. Every person engaged in a commercial activity, other than small suppliers and certain non-residents, is required to register under the GST and collect and remit tax on supplies made in the course of a commercial activity. The registrant is also entitled to recover, through the input tax credit mechanism, tax paid on property and services acquired or imported for use in the commercial activity.

The amendments to paragraphs *(a)* and *(b)* of the definition "commercial activity" introduce a new profit test for a "personal trust", which is newly defined in subsection 123(1) (see commentary on the definition "personal trust"). The same test currently applies to proprietorships and partnerships, all the members of which are individuals. There must be a reasonable expectation of profit from the activities engaged in by such partnerships, proprietorships and personal trusts in order for the activities to be considered commercial activities.

This amendment comes into force on April 24, 1996.

"direct cost"

Part VI and new Part V.I of Schedule V set out the exemptions for supplies made by public service bodies (other than charities) and charities respectively. Section 6 of Part VI and section 5.1 of new Part V.1 exempt certain supplies made for nominal consideration –

that is, consideration that does not equal or exceed the direct cost of the supplies.

The existing definition "direct cost" is found in section 1 of Part VI of Schedule V. That definition is repealed and replaced by the new definition in subsection 123(1). For goods produced or manufactured by a person, the term "direct cost" refers to the cost of the materials incorporated into the goods or expended in making them, excluding overhead costs. Where a person purchases goods or services for resale, the direct cost of the goods or services is defined as the purchase price. In addition, in both cases, the direct cost includes any applicable tax under Part IX of the Act and any provincial retail sales tax or other tax that is prescribed for purposes of section 154.

The definition "direct cost" is amended to remove the reference to services other than those that are acquired for resale, as well as the references to admissions to a film, slide show or similar presentation. Sections 7 and 8 of Part VI of Schedule V, which contain the existing "direct cost" exemptions for these supplies are repealed (see commentary on clause 108).

The new definition "direct cost" comes into force on January 1, 1997 and also applies in relation to supplies made before that day for which consideration becomes due on or after that day, or is paid on or after that day without having become due.

"financial instrument"

The definition "financial instrument" is relevant to the definition "financial service". Existing paragraph (*d*) of the definition "financial instrument" includes an interest in a partnership or a trust or any right in respect of such an interest. The amendment to paragraph (*d*) adds a reference to an interest in an estate of a deceased individual. This clarifies that the supply of an interest in an estate or any right in respect of such an interest is a financial service.

This amendment is effective January 1, 1991.

"financial service"

Under existing paragraph (*j*) of the definition "financial service", insurance adjustment services that are supplied by insurers, marine adjusters or provincially licensed adjusters are treated as financial services. Paragraph (*j*) is amended to extend this treatment to adjustment services that are supplied to an insurer or group of insurers by persons who are permitted by provincial laws to provide adjustment services without holding a licence for that purpose.

This change applies to supplies for which consideration becomes due or is paid without having become due after April 23, 1996.

Another amendment to paragraph (*j*) clarifies that it applies only to an adjustment service that relates to a claim made under a property and casualty insurance policy. Adjustment services relating to a claim under a life or accident and sickness policy are taxable. This amendment applies to supplies for which any consideration becomes due after April 23, 1996 or is paid after that day without having become due. It also applies to any supply for which all of the consideration became due or was paid on or before that day unless the supplier did not charge or collect an amount as or on account of tax in respect of the supply, or tax was charged or collected but, before that day, an application for a rebate was received at a Revenue Canada office, or the supplier filed a return in which the supplier claimed a deduction for an adjustment of the tax credited to the recipient.

Paragraph (*j*.1) of the definition "financial service" is amended by the addition of the words "an insurer" to clarify and confirm the existing administrative practice of treating the provision of an appraisal to an "in-house" insurance adjuster of an insurance company as being a financial service.

The amendment applies to any supply for which consideration becomes due after April 23, 1996 or is paid after that day without having become due. It also applies to any supply for which all of the consideration became due or was paid on or before that day if the supply was treated as exempt (i.e., the supplier did not charge any amount as tax, the supplier issued a credit note for the tax and filed a return claiming a deduction for the amount before April 23, 1996 or the recipient paid an amount as tax and filed an application for a refund of the amount which was received at a Revenue Canada office before April 23, 1996).

Due to a previous amendment, paragraph (*j*.1) of the definition "financial service" read differently in relation to services provided before October 1992. That previous wording is also amended to include a reference to "an insurer".

The amendment to paragraph (*q*) of the definition "financial service" is intended to ensure that tax applies to management or administrative services provided to a corporation, trust or partnership whose principal activity is the investing of funds. This provision is also intended to ensure that the application of tax to such services is not circumvented by an "unbundling" of services provided to the entity. Therefore, the amended paragraph makes explicit reference to "any service" provided by a person who provides management or administrative services.

This encompasses such services as brokerage services that might fall into the category of financial services if they were provided to someone other than a person described in paragraph (*q*). Subparagraph (*q*)(ii) provides authority to prescribe services that may be excluded from the ambit of "any other service". It is proposed that the following services be prescribed for this purpose:

- the issuance of a financial instrument by, or the transfer of ownership of a financial instrument from, the person providing the management or administrative service to the corporation, partnership or trust (for example, the consideration for a mortgage sold to a mortgage fund by the manager of the fund would not be taxable);

- the operation or maintenance of a savings, chequing, deposit, loan, or other account that the corporation, partnership or trust holds with the provider of the management or administrative service; and

- the arranging for the issuance, renewal, variation or transfer of ownership of a financial instrument for a trust governed by a self-directed Registered Retirement Savings Plan or Registered Retirement Investment Fund.

The amendment to paragraph (*q*) applies to supplies for which any consideration becomes due or is paid after December 7, 1994. It also applies to supplies for which consideration became due or was paid on or before that day unless tax in respect of the supply was neither charged nor collected on or before that day. The proposed regulations would have the same application.

"hospital authority"

The definition "hospital authority" is amended to remove the reference to a "part" of an organization. This amendment is consequential to the addition of subsection 259(4.1), which provides specific rebate apportionment rules for a selected public service body such as a hospital authority that undertakes a range of activities in different capacities (see commentary on subclause 69(6)).

The amendment comes into force on April 24, 1996.

"improvement"

The term "improvement" is defined in subsection 123(1) as it relates to capital property and in section 1 of Part I of Schedule V as it relates to real property. The amended definition "improvement" in subsection 123(1) combines both definitions and applies for all purposes of Part IX of the Act. The definition in the Schedule is repealed (see commentary on clause 85).

This amendment is effective on April 24, 1996.

"insurance policy"

Paragraph (*b*) of the definition" insurance policy" is amended to remove a redundant reference to "dental" insurance since the common industry definition of "accident and sickness" insurance already encompasses dental insurance.

This amendment is effective on January 1, 1991.

The definition "insurance policy" is also amended to add paragraph (*c*), which clarifies that construction bonds are treated in all cases as insurance policies. Specifically, bid bonds, maintenance bonds, labour and material bonds, and performance bonds related to construction projects are treated as insurance policies.

This amendment is effective January 1, 1991.

"*inter vivos* trust"

The new definition "*inter vivos* trust" is relevant for purposes of the definition "personal trust", (which is added to subsection 123(1)) and amended section 268. "*Inter vivos* trust" means a trust other than a testamentary trust. Therefore, an *inter vivos* trust is generally a trust other than one that has arisen on and as a consequence of the death of an individual.

This definition is effective January 1, 1991.

"mobile home"

The definition "mobile home" is relevant for purposes of the definitions "builder", "real property", "residential unit", "residential complex", "residential trailer park", "single unit residential complex", and "trailer park".

The existing definition "mobile home" is obsolete and restrictive in that it does not encompass all structures that are commonly known as "mobile homes". Specifically, the size requirement and the requirement that the structure be towed on its own wheels to a site do not reflect current designs of these homes.

The definition is therefore amended to remove these two requirements. In addition, the existing exclusion of a "vehicle or trailer for recreational use" may be too broad since virtually any home may be for recreational use. The definition is amended so that the exclusion applies to vehicles or trailers that are "designed" for recreational use. Finally, the existing exclusion of "free-standing appliances or furniture" sold with the mobile home is removed. This reference is unnecessary because such items would not be considered to be part of the mobile home in any event. Of course, where these are incidental to, and supplied together with, the home for a single consideration, section 138 applies to deem the appliances and furniture to be part of the mobile home.

These changes will enable builders of certain structures that are excluded from the existing definition of "mobile home" to credit purchasers for the amount of a new housing rebate in respect of these homes. In addition, these builders will be subject to the same rules as builders of other types of residential property, such as the self-supply rules under section 191.

Under subsection 254(2), the GST New Housing Rebate is available to purchasers of single unit residential complexes. Under subsection 254(4), an individual who purchases a mobile home from a builder may receive an immediate credit for the amount of the rebate, which may subsequently be deducted from the builder's net tax.

A structure that does not qualify under the existing definition "mobile home" may qualify for a rebate for owner-built homes under section 256, provided that the structure qualifies as a "single unit residential complex" when affixed to land. However, the builder of such a structure would not currently be able to credit the amount of the rebate to the owner or purchaser because the structure would not qualify as a "single unit residential complex" at the time it is sold by the builder. The broadening of the definition "mobile home" will allow the rebate to be credited at the time of purchase in more instances.

This amendment is effective on April 24, 1996. However, the amendment will entitle builders to credit the amount of a new housing rebate in respect of a mobile home sold before that day where consideration for the home is invoiced or paid on or after that day.

A special transitional rule applies to the lease of a residential trailer park site on which a structure that newly qualifies as a mobile home is situated. In this case, two separate supplies would be deemed to occur under the lease. The first supply would be deemed to end on April 23, 1996 and the second supply would begin the following day. As a result, the amendment to the definition "mobile home" does not cause a supply by way of lease to become exempt prior to April 23, 1996 and a change in use of the site, if applicable, will be recognized only following that day. (Reference should also be made to section 198.1 for rules regarding changes in use of property as a result of an amendment to the Act.)

"non-profit organization"

The definition "non-profit organization" is amended to exclude a "public institution", which is newly defined in subsection 123(1) as a person that is a registered charity for purposes of the *Income Tax Act* and that is a hospital authority, university, public college, school authority or person determined by the Minister of National Revenue to be a municipality for purposes of Part IX of the *Excise Tax Act*. These entities are currently excluded from the definition "non-profit organization" by virtue of the fact that all charities are excluded. However, since the term "charity" is amended so that it no longer encompasses "public institutions", a specific reference to the latter is required in order to continue to carve them out of the definition "non-profit organization".

The amended definition "non-profit organization" applies as of January 1, 1997. It also applies in relation to supplies made before that day for which consideration becomes due or is paid without having become due on or after that day.

"office"

Existing subsection 123(1) defines the term "officer" for purposes of Part IX of the Act. This definition is relevant for purposes of the definitions "business" and "service". For greater clarity and for consistency with the *Income Tax Act*, the definition "office" is added to subsection 123(1) and the term "officer" is redefined accordingly as a person who holds an office.

The term "office" has the meaning assigned by subsection 248(1) of the *Income Tax Act*, which is consistent with the existing definition of "officer" in subsection 123(1) of the *Excise Tax Act*. However, the new definition "office" excludes, for greater certainty, the position of trustee in bankruptcy and of receiver (including persons who are receivers within the meaning of subsection 266(1)). It also excludes the positions of trustee of a trust and personal representative of a deceased individual where the person's remuneration for acting in that capacity is treated as business income for income tax purposes. This definition of "office" is consistent with the practice of treating persons holding these positions as supplying services in performing duties in their official capacities.

This amendment applies as of January 1, 1991.

"officer"

The definition "officer" is amended as a consequence of the addition of the definition "office" in subsection 123(1) (see commentary above). "Officer" is defined as a person holding an office.

This amendment applies as of January 1, 1991.

"person"

The definition "person" in the English version of subsection 123(1) is amended to clarify that the reference to an estate is a reference only to an "estate of a deceased individual" as opposed to other kinds of estates, such as the estate of a bankrupt.

This amendment applies as of January 1, 1991.

"personal representative"

The new definition "personal representative", which is essentially the same definition as "executor" in existing subsection 267(2), is added to subsection 123(1) to provide consistency in the terms used in the Act to describe an executor of a will or administrator of an estate of a deceased individual. The definition "personal representative" is relevant for the purposes of the trust and estate rules in new section 267.1 and in amended section 270 (see commentary on clauses 73 and 74 respectively).

This amendment applies as of January 1, 1991.

"personal trust"

The new definition "personal trust" is relevant for purposes of section 190 and the exemptions for sales of real property by trusts under section 9 of Part I of Schedule V, paragraph 1(*l*) of new Part V.1 of that Schedule and section 25 of Part VI of that Schedule. For trusts, the existing exemptions are limited to those whose beneficiaries are charities or individuals. The term "personal trust" is used in the amended exempting provisions (see commentary on clauses 90 and 102 and subclause 116(1)). The result is that the condition with respect to beneficiaries applies only to *inter vivos* trusts since the definition "personal trust" includes all testamentary trusts.

The effect of the amendment in section 9 of Part I of Schedule V is that sales of real property by a testamentary trust created on the death of an individual will receive the same treatment that would have applied had the individual sold the property before the individual's death. This change applies to sales made after April 23, 1996. It also applies to sales made on or before that day unless the supplier charged or collected an amount as or on account of tax in respect of the supply before that day.

Another effect of using the term "personal trust" in the exempting provision is to restrict the exemption, in the case of *inter vivos* trusts, to cases where no beneficial interest in the trust is acquired for consideration payable to the trust or to persons who have made a contribution to the trust by way of transfer, assignment or other disposition of property. This restriction in respect of *inter vivos* trusts applies only to sales made after April 23, 1996.

The definition "personal trust" is also used in the amended definition "commercial activity" in subsection 123(1) (see commentary on the definition "commercial activity"). As of April 24, 1996, the profit test in that definition that applies to individuals and certain partnerships also applies to personal trusts.

"public college"

The amendment to the definition "public college" clarifies that, to qualify as such, an organization must receive funding from a government or municipality to support the ongoing delivery of educational services by the organization to the general public. This contrasts with monies that are paid to an organization under special agreements between the organization and a government or municipality for the provision of training to a particular group of students. For example, funding under a program such as the Canadian Jobs Strategy program would not satisfy the criteria of being paid to support the ongoing delivery of educational services to the general public.

The definition "public college" is also amended to remove the reference to "part" of an organization. This amendment is consequential to the addition of subsection 259(4.1), which provides specific rebate apportionment rules for selected public service bodies, such as public colleges, that undertake a range of activities in different capacities (see commentary on subclause 69(6)).

The amended definition "public college" applies for purposes of determining any rebate under section 259 for which an application is filed at a Revenue Canada office on or after April 23, 1996. For all other purposes, the amendment applies as of January 1, 1997.

"public institution"

The definition "public institution" is added to refer to a person that is both a registered charity within the meaning of the *Income Tax Act* and either a hospital authority, public college, school authority, university (all within the meaning of subsection 123(1)) or person determined by the Minister of National Revenue to be a municipality for all purposes of Part IX.

"Public institutions" are excluded from the amended definition "charity" in subsection 123(1) (see the commentary above on that definition). Therefore, after 1996, any reference to "charity" in Part IX will no longer include a reference to the organizations newly defined as public institutions. However, most of the provisions that apply to charities under the existing legislation are amended to continue to apply to public institutions by explicit reference to the latter. For example, existing section 2 of Part VI of Schedule V (the general exemptions for supplies by charities) is amended to apply only to public institutions. Separate rules for "charities" are set out in new Part V.1 of Schedule V (see commentary on clause 102).

The definition "public institution" comes into force on January 1, 1997. Any person who, on that day, falls within that definition will be subject to the rules relating to public institutions, as opposed to charities, in relation to any supply for which consideration becomes due or is paid without having become due on or after that day. For example, the exemption for supplies of parking spaces by charities provided for under new Part V.1 of Schedule V would not apply to a person who is a registered charity for income tax purposes but who is defined to be a public institution if the consideration for the supplies becomes due to the person after 1996, even if the agreement for the supply was entered into before 1997. In that case, the supply would continue to be taxable.

"residential complex"

The definition "residential complex" is relevant to, among other things, the determination of whether supplies of accommodation qualify for exemption under Part I of Schedule V to the Act. One of the criteria used to determine whether a building or part of a building is a residential complex for this purpose is whether the building or part constitutes a hotel, motel, inn or similar premises and all or substantially all of the supplies by way of lease, licence or similar arrangement in the building or part are made for periods of less than sixty days. The amendment to the definition "residential complex" clarifies that the test is based on periods of continuous use or possession.

This clarification is consistent with similar wording changes made to the definitions "residential trailer park" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 6, 7 and 8.1 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule.

For consistency, these wording changes are all effective on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any deduction under subsection 232(1) claimed in a return under Division V, or any rebate claimed in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

Since the definition "residential complex" was previously amended, as of September 30, 1992, the wording of that definition between September 15, 1992 and September 30, 1992 is, for consistency, also amended to refer to "continuous possession or use".

"residential trailer park"

The definition "residential trailer park" is relevant for purposes of determining whether a lease of a site in a trailer park, or a sale of a trailer park, qualifies for exemption under Part I of Schedule V to the Act. One of the criteria used to determine whether a trailer park qualifies as a residential trailer park for this purpose is whether the park operator intends to give possession or use of the trailer sites for periods of at least one month in the case of mobile homes and other residential units and twelve months in the case of travel trailers, motor homes and other similar units. The amendment to the definition "residential trailer park" clarifies that the test is based on periods of continuous use or possession.

This clarification is consistent with similar wording changes made to the definitions "residential complex" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 6, 7 and 8.1 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule.

For consistency, these wording changes all apply on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any amount claimed as a deduction under subsection 232(3) in a return under Division V, or as a rebate in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

"residential unit"

This definition is amended to replace the expressions "elderly persons" and "infirm persons" with the more generally accepted expressions "seniors" and "individuals with a disability".

This change comes into force on Royal Assent.

"school authority"

The definition "school authority" is amended to remove the reference to "part" of an organization. This amendment is consequential to the addition of subsection 259(4.1), which provides specific rebate apportionment rules for a selected public service body such as a school authority that undertakes a range of activities in different capacities (see commentary on subclause 69(6)).

This amendment comes into force on April 24, 1996.

"self-contained domestic establishment"

This definition is being added for purposes of subsection 191(7), which relates to remote work sites, and new paragraph (*a*.1) of subsection 170(1), which limits the availability of input tax credits in respect of expenses incurred in relation to home office expenses, consistent with limitations on deductions for income tax purposes. The definition "self-contained domestic establishment" has the meaning assigned by subsection 248(1) of the *Income Tax Act.*

This definition applies as of January 1, 1991.

"short-term accommodation"

The definition "short-term accommodation" in subsection 123(1) is amended to amalgamate it and the definition of that term that is found in existing subsection 252.1(1). The latter provision adds to, and excludes from, the definition "short-term accommodation" certain types of accommodation only for purposes of determining rebates payable to non-resident persons under sections 252.1 and 252.4.

The definition is also amended to exclude, for purposes of those non-resident rebates, residential complexes or units supplied under a timeshare arrangement. Therefore, GST paid on the acquisition of a timeshare right will not be rebatable. The rebates were designed to promote Canada as a tourist destination and site for foreign business conventions. Timeshare rights are commonly acquired for investment purposes.

This amendment applies for purposes of determining any rebate under section 252.1 or 252.4 for which an application is received at a Revenue Canada office on or after April 23, 1996.

Wording changes are also reflected in the amended definition to clarify that a supply of a residential complex or unit by way of lease, licence or similar arrangement constitutes a supply of "short-term" accommodation if the period of "continuous" occupancy of the complex or unit by the individual for whom the accommodation was acquired is less than one month.

This clarification is consistent with similar wording changes made to the definitions "residential complex" and "residential trailer park" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 6, 7 and 8.1 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule. For consistency, these wording changes are generally effective on, or in relation to supplies made on or after, September 15, 1992, the date as of which the latter subparagraph was last amended.

"telecommunication service"

The definition "telecommunication service" is added to subsection 123(1). This definition is relevant for purposes of the place of supply rules in new section 142.1 and the zero-rating provision in new section 22.1 of Part V of Schedule VI (see commentary on clauses 7 and 145 respectively).

The definition encompasses such services as local and long-distance telephone services, cable and pay television, facsimiles and electronic mail, video, audio and computer link-ups and data transmission. The definition also specifies that providing access to a telecommunications facility such as a dedicated line is a telecommunication service whether or not the facility is used.

A distinction must be made between telecommunication services and services delivered by means of telecommunications. The definition does not include services that are related to telecommunication services, such as translation services, charges for the relocation of services, 1-900 numbers, wire news services or directory assistance. For example, an individual dialling a 1-900 number for information is billed for the service of receiving the requested information, not for a telecommunication service. The provider of the information service is the consumer of the telecommunication service, which is a means of delivering the information.

The definition applies in relation to services supplied after April 23, 1996.

"telecommunications facility"

The definition "telecommunications facility" is added to subsection 123(1). A telecommunications facility is any facility, apparatus or other thing that is used or is capable of being used for telecommunications. The definition is broad in scope, including items such as satellites, downlink and uplink earth stations, fibre-optic transmission systems, telephones and fax machines.

This definition is relevant for purposes of the new definition "telecommunication service" in subsection 123(1), the place of supply rules in new section 142.1, as well as new section 22.1 of Part V of Schedule VI (see the commentary on the definition "telecommunication service" as well as the commentary on clauses 7 and 145).

This definition applies in relation to supplies made after April 23, 1996.

"testamentary trust"

The new definition "testamentary trust" is relevant for purposes of the definition "personal trust", which is also added in subsection 123(1), and the definition "settlor" in new subsection 9(1) of Part I of Schedule V. "Testamentary trust" has the meaning assigned by subsection 248(1) of the *Income Tax Act*, which refers to the definition in subsection 108(1) of that Act. A "testamentary trust" is a trust or estate arising as a consequence of the death of an individual, with certain additional criteria relating to the contribution of property by a person other than an individual.

This definition is effective January 1, 1991.

"university"

The definition "university" is amended to remove the reference to "part" of an organization. This amendment is consequential to the addition of subsection 259(4.1), which provides specific rebate apportionment rules for a selected public service body such as a university that undertakes a range of activities in different capacities (see commentary on subclause 69(6)).

This amendment comes into force on April 24, 1996.

"used tangible personal property"

The expression "used tangible personal property" refers to tangible personal property that has, at any time, been used in Canada. This definition is amended to remove any reference to "used specified tangible personal property" as that expression will no longer be used in the Act. Under the existing legislation, the expression is relevant for purposes of section 176 (purchase of used goods), which is being amended to, among other things, remove all special rules for used specified tangible personal property (see commentary on clause 25). The expression is also used in existing sections 183 and 184 in relation to the rules governing supplies of such property by creditors and insurers respectively. Those rules are being amended to refer to all specified tangible personal property as opposed to referring only to such property that is used (see commentary on clauses 33 and 34).

The amendment to the definition is effective on April 24, 1996.

Clause 2

Person Resident in Canada

ETA
132(1)

The country in which a supplier or recipient of a supply resides is relevant to the application of a number of provisions in Part IX of the Act. For example, certain supplies are zero-rated under Part V of Schedule VI as exports where they are made to non-resident persons. In addition, non-residents are entitled to a rebate of tax paid on exported goods under section 252 and on accommodation under section 252.1.

Existing section 132 deals with the question of residency for GST purposes. The determination of residency is ordinarily based on criteria established by jurisprudence. Nonetheless, section 132 sets out certain special rules for particular circumstances.

New paragraph 132(1)(*d*) deems those individuals who are deemed to be resident in Canada under subsection 250(1) of the *Income Tax Act*, other than sojourners deemed resident by virtue of paragraph (*a*) of that subsection, to be resident in Canada for GST purposes. This amendment ensures that government personnel living abroad will be treated as residents of Canada for GST purposes.

This amendment applies after April 23, 1996.

Clause 3

Sponsorships of Public Sector Bodies

ETA
135

Existing section 135 of the Act provides that where a public service body supplies a service (other than certain advertising services), or a right to use a copyright, trade-mark, trade-name or other similar property, to a sponsor of an activity of the body in order to publicize the sponsor's business, the public service body is deemed not to be making a supply for GST purposes. Prior to the amendment to the definition "non-profit organization", which applied after September 1992, section 135 applied to agents of the Crown that operated on a not-for-profit basis. However, the amendment to that definition explicitly excluded such agents from being considered "non-profit organizations". This had the unintentional effect of excluding them from the application of section 135. The section is therefore amended to apply to "public sector bodies" which includes governments and Crown agents.

This amendment applies to supplies made after September 1992.

Clause 4

Combined Supply of Real Property

ETA
136(2)

Subsection 136(2) provides that, where a supply is made of real property that includes a residential complex and other real property, the provision of the residential complex is treated as a separate supply. This ensures that, if the residential complex would have been exempt under Part I of Schedule V when supplied on its own, it will be exempt when supplied together with taxable real property.

The amendment extends this rule to a supply of real property that includes a residential trailer park and other real property.

This amendment is effective January 1, 1991.

Clause 5

Input Apportionment Rules

ETA
141.01

Subsection 141.01(1) Meaning of "endeavour"

The term "endeavour" is defined in subsection 141.01(1) for purposes of subsections 141.01(2) to (4), which set out rules for determining the extent to which property and services used in "endeavours" are used in commercial and non-commercial activities.
Paragraph 141.01(1)(*a*) is amended to delete the exclusion for businesses that do not involve or intend to involve the making of supplies. Consequently, such activities are subject to the rules of section 141.01, which provide that inputs to activities that do not involve the making of supplies are not considered to be for consumption, use or supply in the course of a commercial activity and therefore are not eligible for input tax credits. For example, a non-profit organization that is involved in lobbying for particular causes but that does not make supplies would not be entitled to claim input tax credits.

This amendment applies as of April 24, 1996.

Subsection 141.01(1.1) Meaning of "consideration"

The rules in section 141.01 are amended to stipulate that the taxable supplies referred to therein are those that are made for consideration (see commentary below on subsections (2), (3) and (5)). New subsection 141.01(1.1) provides that supplies for nominal consideration are to be treated the same as supplies for no consideration since the reference to "consideration" does not include a reference to nominal consideration.

The subsection applies as of January 1, 1991.

Subsection 141.01(1.2) Grants and Subsidies

The amendments to subsections 141.01(2), (3) and (5) described below clarify that it is only the making of taxable supplies for consideration that gives rise to input tax credit entitlements. However, this would unintentionally restrict the input tax credit entitlements of certain grant recipients who incur expenses in carrying out activities that are fully funded by grants or subsidies, such as individual consultants providing counselling services to eligible recipients under a government employment program. New subsection 141.01(1.2) ensures that these grant recipients are entitled to claim input tax credits in respect of their activities that involve the making of taxable supplies. This is consistent with the general policy that the receipt of grants and subsidies should not affect a registrant's input tax credit entitlement.

New subsection 141.01(1.2) applies as of January 1, 1991.

Subsections 141.01(2), (3) and (5) Apportionment Rules

Section 141.01 is amended by specifying that the "taxable supplies" referred to in subsections 141.01(2), (3) and (5) are supplies made "for consideration". This reinforces the basic pro-rating rule followed by businesses that make exempt supplies. Specifically, they must look to the taxable and exempt output of their business in determining their input tax credit entitlement. They are entitled to claim input tax credits in respect of their business inputs only to the extent that those inputs are acquired or imported for the purpose of making taxable supplies for consideration in the course of their business. Pursuant to subsection 141.01(4), however, there may be an entitlement to input tax credits in relation to property or services supplied for nominal (or nil) consideration (referred to as "free supplies") depending on the purpose for which the free supply is made.

These amendments are effective January 1, 1991. A consequential amendment is also made under clause 159 to amend the coming-into-force provision for subsection 141.01(4) so that it is also effective as of January 1, 1991.

Clause 6

Place of Supply

ETA
142

Section 142 sets out the general rules for determining when a supply is made in or outside Canada. The section is amended with respect to the rules relating to intangible personal property and telecommunication services.

Subclause 6(1)

Intangible Personal Property

ETA
142(1)(*c*)(i)

Existing paragraph 142(1)(*c*) deems a supply of intangible personal property such as intellectual property to be made in Canada if the property may be used in whole or in part in Canada, and the recipient of the supply is either resident in Canada or is registered under the GST. The existing rule does not address the situation where a supply of intangible personal property may be used in whole or in part in Canada, and the recipient of the supply is an unregistered non-resident person.

The amendment to subparagraph 142(1)(*c*)(i) removes the reference to a person resident in Canada or registered for the GST so that the determination of the place of supply for intangible personal property is based only on use in whole or in part in Canada.

This amendment applies to supplies made after April 23, 1996.

Subclauses 6(2) and (3)

Place of Supply of a Telecommunication Service

ETA
142(1)(*e*) and 142(2)(*e*)

Existing paragraphs 142(1)(*e*) and (2)(*e*) set out the general rules for determining whether a supply of a telecommunication service is made in or outside Canada. The amendment repeals both paragraphs. New section 142.1 sets out the place of supply rules for telecommunication services, which are newly defined in subsection 123(1) (see commentary on clause 7).

The amendment applies to supplies made after April 23, 1996.

Clause 7

Telecommunication Services – Place of Supply Rules

ETA
142.1

New section 142.1 sets out the place of supply rules for telecommunication services, which are newly defined in subsection 123(1) (see commentary on the definition "telecommunication service" under clause 1).

Subsection 142.1(1) Billing Location

New subsection 142.1(1) provides rules for determining when the "billing location" for a telecommunication service is considered to be in Canada. The billing location is, in some cases, relevant to the determination of the place of supply of the telecommunication service under subsection 142.1(2).

The billing location for a telecommunication service is considered to be in Canada if the fee for the service is charged or applied by the telecommunications company to an account of the recipient that relates to a telecommunications facility ordinarily located in Canada. The term "telecommunications facility" is defined in subsection 123(1) (see commentary on the definition of that term under clause 1). The billing location is not necessarily the billing address or the place to which the invoice is sent. For example, if a business traveller made a long-distance call from a telephone in the United States and used a calling card to have the call charged to the business' number in Canada, the billing location would be considered to be in Canada, even if the business had arranged to have its telephone billings sent to its U.S. branch office for processing.

Where the fee for the service is not charged or applied to an account that the recipient has with the telecommunications company, the billing location is considered to be in Canada if the telecommunications facility used to initiate the service is located in Canada. For example, if a telephone call is paid for by depositing coins in a pay phone or by using a credit card issued by a financial institution, the billing location for the call would be in Canada if the telephone used by the caller is in Canada.

It should be noted that the fact that a billing location for a service is not in Canada does not necessarily mean that the supply of the service is not made in Canada. Under the place of supply rules described below, the billing location is a factor only where the telecommunication is not both emitted and received in Canada. For example, if a person were to make a long-distance call from one place in Canada to another place in Canada but charged it to a number in the United States using a calling card, the supply would be considered to be made in Canada and would therefore be taxable, regardless of the fact that the billing location was not in Canada.

Subsection 142.1(2) Place of Supply

New subsection 142.1(2) sets out the rules for determining when a supply of a telecommunication service is made in Canada. The subsection overrides the general place of supply rules for determining when a supply is made in Canada under section 142 but remains subject to section 143 which deems supplies made by non-resident persons to be made outside Canada in certain circumstances.

New paragraph 142.1(2)*(a)* provides that, where the telecommunication service consists of making a telecommunications facility available for use, the supply of the service is made in Canada if the facility or any part of the facility is located in Canada. This applies whether or not the telecommunications facility is used. Thus, the supply of a dedicated line that is partly located in Canada is a supply of a telecommunication service made in Canada.

New subparagraph 142.1(2)(*b*)(i) provides that, in the case of a telecommunication service other than the supply of the facilities, the service is considered to be supplied in Canada when the telecommunication is both emitted and received in Canada. For example, a telephone call from one location in Canada to another location in Canada is a supply made in Canada, even if the telecommunications facility used to make the call is normally located outside Canada (such as a cellular phone with a non-Canadian billing location).

New subparagraph 142.1(2)(*b*)(ii) provides that a supply of a telecommunication service is made in Canada when the telecommunication is either emitted or received in Canada and the billing location is in Canada.

New section 142.1 applies to services supplied after April 23, 1996.

Clause 8

Partnerships

ETA
145

Existing section 145 sets out certain rules with respect to partnerships. This section is repealed and replaced by amended and more comprehensive rules in new section 272.1 (see commentary on clause 76).

The repeal of section 145 applies as of April 24, 1996.

Clause 9

Small Suppliers

ETA
148

This section sets out the rules to determine whether a supplier qualifies as a "small supplier" for purposes of Part IX of the Act. Small suppliers are relieved from the requirement to register for GST purposes. Those who choose not to register do not have to charge and remit GST, and they are not entitled to input tax credits.

Generally, public service bodies (as defined in subsection 123(1)) qualify as "small suppliers" if they make $30,000 or less in taxable supplies per year. Paragraph 148(1)(*b*) is amended to increase this threshold to $50,000 or less in taxable supplies per year. Public service bodies that have branches or divisions designated as eligible divisions under section 129 may continue to apply this test on a branch-by-branch basis.

Existing subsection 148(2) provides that where the amount of taxable supplies made by a person and its associates exceeds the threshold of $30,000 at any time during a calendar quarter, the person ceases to be treated as a small supplier immediately before that time and will not be a small supplier for the remainder of the quarter. Consistent with the amendment to paragraph 148(1)(*b*), this threshold is also increased to $50,000.

The amendments come into force on April 23, 1996. Reference should be made to the transitional rules set out in clauses 150 and 151 relating to the de-registration of public service bodies and the designation of small supplier divisions.

Clause 10

Charities and Public Institutions as Small Suppliers

ETA
148.1

This section provides an additional test to the one set out in section 148 under which a charity may qualify as a "small supplier" for purposes of Part IX of the Act. Small suppliers are relieved from the requirement to register for purposes of the tax. Those who choose not to register do not have to charge and remit GST, and they are not entitled to input tax credits.

Subsection 148.1(2) is amended as a consequence of the amended definition "charity", which excludes "public institutions". A public institution is newly defined in subsection 123(1) as a person that is a registered charity for purposes of the *Income Tax Act* and that is a university, public college, school authority, hospital authority or person determined by the Minister of National Revenue to be a municipality for purposes of Part IX of the *Excise Tax Act* (see commentary on the definitions "charity" and "public institution" under clause 1). Specific reference is made to public institutions in subsection 148.1(2) to ensure that they continue to be eligible to be small suppliers under section 148.1.

The reference to "public institution" is added as of January 1, 1997.

Section 148.1 is further amended to increase the threshold level of gross revenue below which charities and public institutions qualify as small suppliers. Under existing section 148.1, charities having annual gross revenue in the preceding year of $175,000 or less qualify as "small suppliers". This test is easier for charities to apply than the test under section 148 because it is based only on their gross revenue as determined for income tax reporting purposes. Charities and public institutions can qualify as small suppliers under this test or under the test set out in section 148, and they are not required to meet both tests to qualify. The amendment to section 148.1 increases the gross revenue threshold to $250,000 per year.

This amendment applies as of April 23, 1996.

Clause 11

Financial Institutions

ETA
149

Section 149 sets out rules for determining whether a person will be treated as a financial institution for the purposes of Part IX of the Act. Financial institutions are given special treatment under various provisions of that Part such as the change-in-use rules for capital property, the election under section 150 with respect to supplies between closely related corporations, and the rules in section 185 affecting entitlement to input tax credits for inputs used in the provision of financial services relating to commercial activities.

Under subsection 149(1), there are two categories of financial institutions, those that are described in paragraph 149(1)(*a*) (referred to as "listed financial institutions") and those that meet a "*de minimis*" threshold test under paragraph 149(1)(*b*). The subsection is amended to create two categories of "*de minimis*" financial institutions under amended paragraph 149(1)(*b*) and new paragraph 149(1)(*c*).

Subclause 11(1)

De Minimis Financial Institutions

ETA
149(1)(*b*) and (*c*)

Under existing paragraph 149(1)(*b*), a person is treated as a financial institution throughout a taxation year of the person if the person's income for income tax purposes in the preceding year from interest and dividends and separate fees or charges for financial services exceeded either $10 million or 10 per cent of the total of the person's income from such sources and from supplies other than sales of capital property and financial services. For purposes of this test, a person's income excludes certain types of dividends and, for individuals, is limited to such income from a business. This test is amended so that the total income from such dividends, interest and fees or charges for financial services in the preceding year must exceed both $10 million and 10 per cent of the registrant's total income so defined.

This amendment has the effect of raising the threshold and therefore reducing the number of persons that would fall into the category of financial institution under the *de minimis* test in paragraph 149(1)(*b*). However, a person might still qualify as a financial institution under a new test that is added in paragraph 149(1)(*c*).

The new *de minimis* test in paragraph 149(1)(*c*) looks to the type of financial revenue earned by a person. A person will be considered a financial institution throughout a taxation year of the person if the person's income comprised of interest, fees or other charges, in respect of credit cards or charge cards issued by the person and loans, advances or credit granted by the person, exceeded $1 million in the preceding year. For this purpose, the allowance of an interest-free period between the billing date for an account receivable and the date on which payment is due would not be considered the granting of credit. As well, penalties levied by a vendor for late payment of an account receivable generated in the normal course of the vendor's business would not be considered to be a charge for the provision of credit. The acceptance of a debt that is supported by a negotiable instrument, such as a promissory note, or by a conditional sales agreement is an example of what would be considered the provision of credit.

Whether a person is considered to be a financial institution because of paragraph 149(1)(*b*) or new paragraph 149(1)(*c*) will affect the extent to which the person will be entitled to claim input tax credits in respect of inputs used in the provision of financial services. As under the existing rules, a person that meets the test under paragraph 149(1)(*b*) will not be able to claim input tax credits in respect of property or services to the extent that these are for consumption, use or supply in the provision of any exempt financial service.

As a result of amendments to sections 185 and 198, however, persons that are financial institutions only because of new paragraph 149(1)(*c*) will be able to claim input tax credits in respect of inputs used in the provision of financial services related to their commercial activities except to the extent that the inputs are for consumption, use or supply in the course of activities that involve the granting of advances, loans or credit or in the course of activities that relate to credit cards or charge cards issued by them (see commentary on clauses 35 and 40 for explanation of amendments to sections 185 and 198 respectively).

These amendments apply to taxation years beginning after April 23, 1996.

Subclause 11(2)

Exclusions

ETA
149(4) and (4.1)

Existing subsection 149(4) provides that, in determining whether a person is a financial institution based on the threshold test under paragraph 149(1)(*b*), interest and dividends from related corporations are to be ignored in calculating the total financial income under subparagraph (i) of that paragraph. The amendment to this subsection is consequential to the amendments to subsection 149(1) and will apply the same rule for purposes of the calculation under new paragraph 149(1)(*c*).

New subsection 149(4.1) replicates the rule, found under the preamble to existing paragraph 149(1)(*b*), that charities, non-profit organizations treated like charities under section 259, municipalities, school authorities, hospital authorities, public colleges, universities and qualifying non-profit organizations are excluded from the "*de minimis*" financial institution category.

These amendments apply to taxation years beginning after April 23, 1996.

Clause 12

Election for Exempt Supplies

ETA
150

Section 150 entitles two corporations that are members of the same closely related group that includes a listed financial institution (i.e., those described in paragraph 149(1)(*a*) of the Act) to make an election to treat certain supplies of property and services between them as exempt supplies of financial services. The effect is that the supplying member bears the tax on any inputs attributable to the provision of the property or services to the related member. The supplying member is not entitled to claim input tax credits in respect of those inputs and does not charge tax to the related member.

This election is not intended to exempt "imported taxable supplies" (as defined in section 217), which are subject to tax under Division IV on a self-assessment basis. Applying the closely-related group election to those supplies would result in both parties to the election avoiding tax altogether, thereby creating a bias in favour of importing over acquiring inputs domestically. For this reason, existing subsection 150(1) does not apply for the purposes of Division IV of the Act. The amendment to section 150 is intended merely to clarify this exception. The reference to Division IV in subsection 150(1) is substituted with an exclusion for imported taxable supplies in subsection 150(2).

It should be noted that, while the imported supply received by an importer who is a party to an election under section 150 is not itself exempt, any re-supply of an imported service to another party to the election continues to be treated as an exempt supply of a financial service. Therefore, the importer is engaged in the making of an exempt supply and, as such, is subject to the self-assessment rules under Division IV with respect to the imported service.

The amendment to section 150 applies to payments for imported taxable supplies that become due or are made without having become due after December 7, 1994. Where one or more payments for a supply became due on or before that day and further payments for the same supply become due, or are made without having become due, after that day, the amendment applies only to the latter payments.

Clause 13

Used Tangible Personal Property Trade-Ins

ETA
153(4)

New subsection 153(4) provides that, where a supplier who is a registrant accepts a used good (or a leasehold interest therein) as full or partial consideration for another good, the supplier has to collect GST only on the *net* value if the property being accepted as a trade-in is for consumption, use or supply by the supplier in the course of commercial activities and the person trading in the property is not required to collect tax on it. For example, a car dealer who accepts a trade-in from a consumer as partial consideration for a new car will charge tax only on the difference between the value of the new car and the value of the used car.

When a good is traded in by a registrant who is required to charge tax, the existing rules apply. The trade-in is treated as two transactions – a sale by the registrant of a used good and a sale by the supplier of the new good – and tax is collectible in respect of both supplies.

The new trade-in rule is added as a consequence of the amendment to section 176, which eliminates notional input tax credits except for certain returnable containers (see commentary on clause 25). Charging tax on the net value prevents tax cascading when a used good, for which no input tax credit was claimed, is accepted as a trade-in by a supplier and is subsequently resold on a taxable basis.

If the supplier and recipient are not dealing with each other at arm's length and the value attributed to the used good is greater than its fair market value, the tax is to be calculated on the difference between the value of the new good and the fair market value of the good being traded in.

The rule under new subsection 153(4) deeming the consideration for a supply of property for which a trade-in is accepted to be an amount net of the value of that trade-in does not apply in determining whether any condition of a provision of Part IX or the related Schedules that compares an amount of consideration to any other value is satisfied. For example, the denial, under section 170, of an input tax credit in respect of property acquired by an employer for the purpose of resupply to an employee depends on whether the resupply is made for consideration equal to the fair market value of the property. For purposes only of determining whether section 170 applies, the value of consideration for the supply to the employee would be determined based on the actual value as opposed to the value net of any trade-in accepted by the employer as partial consideration paid by the employee. Subsection 153(4) would still apply for purposes of determining the tax collectible by the employer in respect of the supply to the employee.

The deeming rule under subsection 153(4) also does not apply for the purposes of determining whether a person satisfies certain thresholds under section 148 (small supplier rule) or section 249 (filing periods).

In addition, new subsection 153(4) does not apply to any supply of property as a trade-in that is a zero-rated supply (e.g., a trade-in of zero-rated farming equipment), a supply made outside Canada (e.g., a trade-in delivered outside Canada to the supplier of the new good), a supply that is otherwise deemed to have been made for no consideration because of an election under section 156 or a supply of a trade-in to which paragraph 167(1.1)(*a*) applies and therefore no tax is payable because it is supplied as part of a sale of a business.

The amendments to section 153 apply to supplies made after April 23, 1996 except where a supplier accepted a trade-in under an agreement in writing entered into before July 1, 1996 and charged or collected tax based on the value of the new good without taking into account the value of the trade in. In other words, if a supplier followed the rules that applied in respect of trade-ins accepted before April 23, 1996 as consideration for a supply of another good made under such an agreement, those previous rules apply. (Reference should also be made to the amendments, under clause 25, to section 176, which also applies in such cases).

Clause 14

Taxes, Duties and Fees

ETA
154

Section 154 provides that, for purposes of determining the tax payable on a supply of property or a service, the consideration for the supply includes all federal and provincial taxes, duties and fees that are imposed either on the supplier or on the recipient in respect of that property or service but excludes a tax, duty or fee prescribed under the *Taxes, Duties and Fees (GST) Regulations*.

Section 154 is amended to clarify that the prescribed taxes, duties and fees in issue for exclusion from the consideration for a supply are those that are payable by the recipient of the supply. Taxes applied earlier in the chain – for example, on the manufacturer – form part of the cost of the property or service and are therefore already reflected in the consideration for the supply.

In addition, section 154 is amended to clarify that taxes, duties or fees that are collectible by a vendor at any level of the marketing chain also form part of the consideration for the supply by the vendor, even though they are imposed on the final consumer, unless they are specifically prescribed under the section. For example, taxes on tobacco and gasoline payable by final consumers are pre-collected by wholesalers and are subject to tax under Part IX of the Act at the time they become collectible.

These amendments are effective January 1, 1991.

Clause 15

Non-Arm's Length Supplies

ETA
155

Subsection 155(1) provides an anti-avoidance rule whereby certain non-arm's length supplies made for less than fair market value or for no consideration are deemed to have been made for fair market value.

Subsection 155(2) is amended to clarify that this anti-avoidance rule does not apply to supplies to employees or shareholders or persons related thereto when the supply gives rise to a taxable benefit in respect of which GST is remittable under section 173. As a result, the GST remittance is determined on the basis of the employee benefit rules under section 173 and not under section 155.

Subsection 155(2) is also amended to clarify that the anti-avoidance rule does not apply in situations where subsection 170(1) or 172(2) would otherwise apply. These provisions deal with cases where property or services are acquired or appropriated by a person for certain individuals with whom the person is not dealing at arm's length. They apply only to the extent that a taxable supply of the property or service is not made for consideration equal to its fair market value.

The amendments relating to sections 170, 172 and 173 apply to supplies made after April 23, 1996.

Existing subsection 155(2) also provides that the anti-avoidance rule does not apply to supplies that are otherwise exempt under any of sections 6 to 10 of Part VI of Schedule V, which contain the nominal consideration exemptions applicable to public sector bodies. This subsection is amended to refer to new Part V.1 of Schedule V, which sets out the amended exemptions for charities (see commentary on clause 102). In addition, the reference to sections 7 and 8 of Part VI of that Schedule is removed as a consequence of the repeal of those sections (see commentary on clause 108), and replaced with a reference to Part VI in general.

This amendment applies with respect to supplies for which any consideration becomes due on or after January 1, 1997 or is paid on or after that day without having become due.

Clause 16

Donations to Charities and Registered Parties

ETA
164

Existing section 164 provides that, where a charity or a registered party makes a supply of a right of admission to a dinner, ball, concert or similar fund-raising event, no GST applies on the portion of the admission price that can reasonably be considered a gift or contribution. In these cases, "charity" refers to a registered charity or a registered Canadian amateur athletic association within the meaning of the *Income Tax Act*, while "registered party" includes a political party, local party association, candidate or referendum committee. This section also excludes from the tax the portion of the price of other property or services supplied by a registered party for which a political contribution deduction or tax credit can be claimed for income tax purposes.

This provision is repealed. In its place, an exemption is provided covering the entire price of admissions where a charitable receipt could be issued, or a political contribution deduction taken, for income tax purposes. In addition, an exemption is added to cover the entire purchase price of other property or services where any portion of the price can reasonably be considered a political contribution for income tax purposes. The exemptions applicable to charities, public institutions (as newly defined in subsection 123(1)) and registered parties are set out in section 2 of new Part V.1 of Schedule V, and section 3 and new section 18.2 of Part VI of that Schedule respectively (see commentary on clauses 102, 105, and 113.1 respectively).

The amendment applies to supplies made on or after January 1, 1997 but does not apply to admissions to events for which any admissions have been supplied before that day.

Clause 17

Imposition and Computation of Tax

ETA
165

Section 165 imposes tax on recipients of taxable supplies and sets out rules for how to compute the tax in special cases.

Subclause 17(1)

Pay Telephone Services

ETA
165(3)

Subsection 165(3) contains special rules for calculating the amount of GST payable on telephone services paid for by depositing coins into a coin-operated telephone. The tax is zero where the amount deposited is less than 70 cents. The amended subsection provides that the tax is zero where the amount deposited is 25 cents or less. In other cases, the tax is calculated as 7 per cent of the amount deposited but where the resulting product is a multiple of 5 cents and a fraction of 5 cents, the product is rounded to the nearest 5 cents.

This amendment applies to any call placed at a coin-operated telephone and paid for by depositing coins in the phone after April 23, 1996.

Subclause 17(2)

Coin-Operated Devices

ETA
165(3.1)

New subsection 165(3.1) provides rules for calculating the amount of tax payable on goods or services supplied through mechanical coin-operated devices that are built in such a way that they can accept only a single coin as the total consideration for the supply.

Under these rules, the tax payable for the supply is zero where the tax otherwise determined in accordance with the general rules of the legislation is less then 2.5 cents, and is 5 cents where the tax otherwise determined is 2.5 cents or more but less than 5 cents. Tax is rounded to the nearest cent where the tax otherwise determined is 5 cents or more.

The amendment applies to supplies made after April 23, 1996. Due to the operation of section 160, the new rules will therefore apply to any supply where the consideration for the supply is removed from the coin-operated device after that day.

Clause 18

Supply of Business Assets of Deceased

ETA
167(2)

Existing subsection 167(2) provides for an election to have a tax-free roll-over of business assets of a deceased individual from the individual's estate to a beneficiary of the estate who is an individual and a registrant provided the beneficiary is acquiring the assets for consumption, use or supply in the course of a commercial activity.

For greater certainty, subsection 167(2) is amended to refer to the estate – i.e., as opposed to the deceased's personal representative – as the supplier and the party to the election since the estate is treated as a person for GST purposes.

This amendment is effective January 1, 1991.

Clause 19

Required Documentation

ETA
169(4)(*b*)

Subsection 169(4) provides that a GST registrant is not permitted to claim an input tax credit unless the registrant has sufficient evidence to support the claim. Furthermore, where the registrant is required, under subsection 228(4), to remit the tax on real property purchased by the registrant, subsection 169(4) stipulates that the special return, which accounts for the tax and is required under subsection 228(4), must be filed before the input tax credit in respect of that property may be claimed.

The amendment to paragraph 169(4)(*b*) is consequential to the amendment to subsection 228(4), which eliminates the requirement for registrants to file a separate return unless the registrant acquires real property for use or supply otherwise than in the course of the registrant's commercial activities (see commentary on clause 47). Where the property is for use or supply primarily in the course of the registrant's commercial activity, the tax must be reported in the registrant's regular GST return.

This amendment is effective January 1, 1997.

Clause 20

Restrictions on Input Tax Credits

ETA
170(1)(*a*.1)

Subsection 170(1) lists certain importations and taxable supplies received by a registrant that do not give rise to any input tax credit entitlement.

New paragraph 170(1)(*a*.1) is added. This paragraph is consistent with subsection 18(12) of the *Income Tax Act*, which denies a deduction of expenses incurred by an individual in respect of a home office where it is neither the individual's principal place of business nor a place that is both used exclusively by the individual to earn income from a business and used on a regular and continuous basis for meeting clients, customers or patients. This amendment provides for a similar denial of input tax credits in such circumstances.

For imported goods, the amendment applies to importations after April 23, 1996 and, in other cases, to supplies for which all of the consideration becomes due after that day or is paid after that day without having become due.

Clause 21

Benefits to Shareholders, etc.

ETA
172(2)

Subsection 172(2) provides a self-supply rule where property or services are appropriated for the benefit of a shareholder, beneficiary, partner or member of a corporation, trust, partnership, charity or non-profit organization that is a registrant. Where there is such an appropriation, the registrant is considered to have made a supply of the property or service at its fair market value and to have collected GST on that amount.

Subsection 172(2) is amended as a consequence of the amendments to the definition "charity" in subsection 123(1) and the addition to that subsection of the definition "public institution" (see commentary on the definitions of those terms under clause 1). The amendment to subsection 172(2) ensures that the self-supply rule will continue to apply to the same entities to which it currently applies.

This amendment comes into force on January 1, 1997.

Clause 22

Taxable Benefits

ETA
173

Under existing section 173, where a registrant makes a supply, other than an exempt supply, of property or a service to an employee or shareholder of the registrant and the supply gives rise to a taxable benefit for income tax purposes, GST applies to the value of the benefit, excluding any provincial tax component. To simplify the calculation of the GST to be remitted, the amendments to section 173 provide for the calculation of GST on a value that includes the provincial sales tax and GST included in the taxable benefit for income tax purposes. Further changes include streamlining the treatment of reimbursements for goods and services that give rise to an employee benefit, as well as extending the election under subsection 173(2) to automobile operating costs. These changes are explained below.

Related amendments are made to sections 6, 12 and 15 of the *Income Tax Act* (see commentary on clauses 155 to 157).

Subclause 22(1)

Employee and Shareholder Benefits

ETA
173(1)

Under the existing legislation, where expenses relating to the use or operation of an automobile in a taxation year are fully reimbursed by an employee or shareholder, section 173 does not apply. Rather, GST is payable by the employer or corporation on each reimbursement as it is received from the employee or shareholder. No amount is included as an employee or shareholder benefit for income tax purposes in determining the income of the individual.

New paragraph 173(1)(*b*) provides that section 173 does apply in this circumstance. Under new subparagraph 173(1)(*d*)(v), GST remains payable on the reimbursements received, but these are aggregated and the tax is deemed to have been collected only at the end of February in the following year or, in the case of shareholders, at the end of the taxation year of the corporation.

New paragraph 173(1)(*c*) replicates the rules set out in existing paragraph 173(1)(*d*) and ensures that the provision applies to employee or shareholder benefits arising out of the provision of property to persons related to the employee or shareholder.

New subparagraphs 173(1)(*d*)(i) to (iv) list the circumstances in which the employer or corporation would not be required to remit GST on the benefit. Under the existing legislation, these exceptions are set out in subparagraphs 173(1)(*e*)(i) to (v). One such exception is where an election under subsection 173(2) is made in respect of a passenger vehicle or aircraft. Existing subparagraph 173(1)(*e*)(ii) requires that this election be in effect at the time the supply is made. This would pose a problem if, for example, a vehicle were leased to an employer and made available to an employee in a taxation year prior to that in which the employer wished to make the election. To address this, new subparagraph 173(1)(*d*)(ii) provides that the election needs to be in effect only at the beginning of the taxation year for which the benefit is calculated.

The calculation of the GST remittance in respect of an employee or shareholder benefit is simplified under new subparagraph 173(1)(*d*)(v), which replaces existing subparagraph 173(1)(*e*)(v). The existing provision requires that any provincial sales tax (PST) included in the benefit amount for income tax purposes be subtracted before determining the GST to be remitted by the employer or corporation. This will no longer be required under the amended provision. Instead, under new subparagraph 173(1)(*d*)(vi), the GST remittance is based on the GST- and PST-included total benefit reported for income tax purposes.

As noted above, the amendments also affect the treatment of reimbursements paid by employees and shareholders. Under the existing legislation, GST is collectible on reimbursements in respect of employee or shareholder benefits in the reporting period in which they are made. Under the revised rules in new subparagraph 173(1)(*d*)(v), the total consideration used in calculating the GST remittable by the employer or corporation is the sum of the GST- and PST- included benefit reported for income tax purposes and all reimbursements made by the employee to the employer or by the shareholder to the corporation throughout the year. Under new subparagraph 173(1)(*d*)(vii), which replaces existing subparagraph 173(1)(*e*)(vi), the GST in respect of the total consideration will be deemed to have been collected on the last day of February in the following taxation year or, in the case of shareholders, on the last day of the corporation's taxation year. As a result, GST will no longer be collectible on reimbursements in the reporting period in which they are paid.

For purposes of determining the amount of GST to be remitted by the employer or corporation in respect of any benefit other than the automobile operating cost benefit, a factor of 6/106 will apply to the amount determined to be the tax-included total consideration. In the case of the latter benefits, the prescribed percentage – currently five per cent – applies to the amount determined to be the total consideration.

Further wording changes reflected in new subparagraph 173(1)(*d*)(v) address the situation where property is made available to an individual over two or more taxation years. In this case, each of the taxable benefit amounts and reimbursements for those years is treated as part of the consideration for the supply of the property and is subject to tax in the year it arises. In determining the GST remittance in respect of a particular year's benefit or reimbursement, it is not necessary to refer to the total consideration for the supply. Rather, new subparagraph 173(1)(*d*)(v) refers only to the total consideration for the particular year's use of the property.

These amendments apply to the 1996 and subsequent taxation years.

Subclause 22(2)

Effect of Election

ETA
173(3)(*d*) and (*e*)

Subsection 173(3) sets out the rules that apply where an election under subsection 173(2) is made in respect of a passenger vehicle or aircraft. Generally, the effect of the election is that, while a GST component is included in the employee or shareholder benefits for income tax purposes, GST is not required to be remitted by the employer or corporation in respect of those benefits, and the registrant forgoes input tax credits for the lease or acquisition costs of the vehicle or aircraft.

New paragraph 173(3)(*d*) broadens the scope of this election so that it applies to the operating expenses of the vehicle or aircraft. In effect, registrants who make such an election in respect of a vehicle or aircraft will no longer claim input tax credits for supplies, such as gas and repairs, used in the operation of the vehicle or aircraft during a period in which the election is in effect. In turn, no GST is required to be remitted in respect of benefits arising from the operation of such vehicles or aircraft. New paragraph 173(3)(*e*) provides for a recapture where an input tax credit has already been claimed in respect of expenses relating to the operation of the vehicle or aircraft in a period during which an election is in effect.

This amendment applies for the purpose of determining net tax for reporting periods ending after 1995. It applies to existing elections as if they were made on January 1, 1996 so that only those expenses that are attributable to periods after 1995 are ineligible for input tax credits or subject to the recapture rule.

Clause 23

Travel and Other Allowances

ETA
174

Section 174 deals with allowances paid to employees, partners and volunteers for expenses incurred by them and deems the person paying the allowance to have received a supply and to have paid tax.

Subclauses 23(1) and (2)

ETA
174(*a*)(iii) and (*c*)(ii)

Subparagraphs 174(*a*)(iii) and (*c*)(ii) are amended to refer to a "public institution" as a consequence of the amendment to the definition "charity" in subsection 123(1) and the addition to that subsection of the definition "public institution". The latter refers to a registered charity (within the meaning of the *Income Tax Act*) that is a school authority, hospital authority, public college, university or person determined by the Minister of National Revenue to be a municipality for the purposes of Part IX of the Act (see commentary on the definitions "charity" and "public institution" under clause 1). The amendments to subparagraphs 174(*a*)(iii) and (*c*)(ii) ensure that section 174 will continue to apply to all entities that are registered charities for income tax purposes.

These amendments apply as of January 1, 1997.

Subclause 23(3)

ETA
174(*d*) to (*f*)

The purpose of section 174 is to enable a person who is an employer, partnership or charity to claim an input tax credit or rebate in respect of allowances paid for certain expenses to the same extent as would have been the case had the person incurred the expense directly. Section 174 is amended to achieve this more directly by deeming, in new paragraph 174(*d*), the person to have received a supply of the property or service and by deeming, in new paragraph 174(*e*), the use of the property or service by the employee, partner or volunteer to be that of the employer, partnership, charity or public institution, as the case may be. New paragraph 174(*f*) is added to clarify that the time at which the person is considered to have paid tax in respect of the supply is the time at which the allowance is paid.

These amendments are effective as of January 1, 1991, except that they do not apply to claims for input tax credits or rebates that are received at a Revenue Canada office before April 23, 1996.

Clause 24

Reimbursements

ETA
175 and 175.1

Section 175 Employee, Partner or Volunteer Reimbursements

Section 175 applies where a person who is an employer, partnership or charity reimburses an employee, partner or volunteer for expenses incurred in relation to the person's activities. The purpose of the provision is to enable the person to claim an input tax credit or rebate in respect of the reimbursed expense to the same extent as would have been the case had the person incurred the expense directly. The provision is amended to achieve this more directly by deeming the person to have received a supply of the property or service and by deeming the use of the property or service by the employee, partner or volunteer to be that of the employer, partnership or charity.

The provision is also amended to make reference to a "public institution" as a consequence of the change to the definition "charity" in subsection 123(1) and the addition to that subsection of the definition "public institution". The latter refers to a registered charity (within the meaning of the *Income Tax Act*) that is a school authority, hospital authority, public college, university or person determined by the Minister of National Revenue to be a municipality for the purposes of Part IX of the Act (see commentary on clause 1). This amendment to section 175 ensures that it will continue to apply to all persons that are registered charities for income tax purposes.

Existing paragraph 175(*c*) refers to "tax paid or payable" in respect of a reimbursed expense. New subsection 175(1) refers only to the tax paid in respect of the expense.

The substantive change reflected in new subsection 175(1) is in the manner of determining the amount of the reimbursement that represents tax deemed to have been paid by the employer, partnership, charity or public institution. This amount is used in the determination of an input tax credit or rebate payable to that person. Under existing section 175, it is the amount included in the reimbursement and paid on account of tax. Under new subsection 175(1), it is determined by multiplying the total tax paid by the employee, member or volunteer by the lesser of the percentage of the total expense that is reimbursed and the percentage of the total use for which the property or service was acquired or imported that relates to the activities of the person paying the reimbursement.

The changes to subsection 175(1) are effective January 1, 1991 but do not apply for the purpose of determining any amount claimed (other than an amount deemed to have been claimed) in a return or application received at a Revenue Canada office before April 23, 1996. Also, the reference to "public institution" applies only after 1996.

New subsection 175(2) has the effect of denying an input tax credit to a partnership in respect of a reimbursed expense incurred by a partner where the partner has already claimed an input tax credit in respect of the same expense by virtue of new paragraph 272.1(2)(*b*) (see commentary on clause 76). This subsection is effective as of January 1, 1991 but does not apply for the purpose of determining any amount claimed (other than an amount deemed to have been claimed) in a return or application received at a Revenue Canada office before April 23, 1996. On or before that day, however, the reference to new paragraph 272.1(2)(*b*) shall be read as a reference to existing subsection 145(2), which the new paragraph replaces.

Section 175.1 Warrantee Reimbursement

New section 175.1 ensures that a warrantor can claim input tax credits in respect of the tax portion of reimbursements it has made to the warranty holder, who is referred to as the "beneficiary" in the legislation, for property or services such as repairs provided under the terms of a warranty and supplied by a third party. This could occur where charges for repairs and tax are initially paid by the warranty holder instead of the warrantor due to an emergency or due to the distance from the warrantor's own authorized repair facility.

The input tax credit is calculated based on the portion of the total cost that is reimbursed by the warrantor. To be entitled to the input tax credit, the warrantor must provide written indication with the reimbursement that a portion of the reimbursement is on account of the GST.

New section 175.1 also addresses the situation where a warranty holder is a registrant that has claimed an input tax credit or rebate for the property or service and is subsequently reimbursed an amount on account of the tax by the warrantor. In this situation, the section provides for the recapture, from the warranty holder, of the tax reimbursed, in proportion to the percentage of the total tax payable that was claimed as an input tax credit or rebate.

New section 175.1 applies to amounts reimbursed after April 23, 1996.

Clause 24.1

Used Goods

ETA
Heading before section 176

The heading "Used or Specified Tangible Personnel Property" before section 176 is replaced, as of April 24, 1996, with the heading "Used Returnable Containers" as a consequence of the repeal of the rules dealing with used goods in general and specified tangible personal property in section 176 (see commentary on clause 25).

Clause 25

Used Tangible Personal Property

ETA
176

Existing section 176 deems tax to have been paid by a registrant, in certain circumstances, where the registrant has acquired used tangible personal property from a person not required to charge tax. This enables the registrant to claim notional input tax credits in respect of these purchases to the extent that they are for consumption, use or supply in a commercial activity. The notional input tax credit mechanism was intended to remove the tax that was originally paid on the goods and not recovered.

These amendments replace subsections 176(1) to (3) with the provision for used returnable containers and repeals the notional input tax credit system for other used goods. Nonetheless, notional input tax credits will continue to be provided in the case of seizures and repossessions by creditors (section 183) and for property transferred to an insurer on the settlement of a claim (section 184).

As a result of the elimination of notional input tax credits for used goods traded in by a person who is not required to charge tax, a new provision respecting trade-ins is introduced in new subsection 153(4) (see commentary on clause 13).

Eliminating notional input tax credits removes the need for special rules for supplies of specified tangible personal property (such as works of art and jewellery). As a result, specified tangible personal property will receive the same GST treatment as other tangible personal property, except in the case of property seized or repossessed or transferred to an insurer on settlement of a claim.

For example, a registrant purchasing a work of art from a dealer for an office will be able to claim an input tax credit if engaged in commercial activities. If the artwork were subsequently resold, it would be taxable. Registrants holding specified tangible personal property on April 24, 1996 may be able to claim previously denied input tax credits through the operation of the change-in-use rules (subsection 199(3)) since the property will, at that time, no longer be deemed to be used otherwise than in commercial activities.

The elimination of notional input tax credits also removes the need for the recapture of input tax credits in respect of specified tangible personal property acquired by a registrant for export or otherwise supplied by the registrant on a zero-rated basis. Therefore, registrants who have claimed actual or notional input tax credits for used specified tangible personal property acquired on or before April 23, 1996 will not have to self-assess the tax if they subsequently export the property.

Subclause 25(1)

Acquisition of Used Returnable Containers

ETA
176(1)

Subsection 176(1) is amended to make reference only to returnable containers used in the delivery of property that is not zero-rated, such as soft drink bottles.

The rules with respect to returnable containers remain the same. Where a registrant purchases a returnable container from a person who is not required to charge tax (for example, where a consumer returns used containers to a retailer in exchange for a deposit refund), this subsection allows the registrant to claim a notional input tax credit equal to 7/107ths of the amount paid to the person. It should be noted that no notional input tax credit may be claimed in respect of a container used for a zero-rated good, such as milk, as tax would not have been charged on the deposit for such a container.

A registrant cannot claim a notional input tax credit in respect of a purchase of a used container unless the registrant pays the same amount for the empty container as the amount (including tax) that the registrant receives when returning the empty container to suppliers. This rule does not apply to a registrant who buys and sells beverage containers only when they are empty (such as the operator of a bottle depot).

The amendment generally applies to supplies made after April 23, 1996. However, the amendment does not apply in respect of any used good supplied as a trade-in under an agreement in writing entered into before July, 1996 if the registrant who accepted the used good as full or partial consideration for another good charged or collected tax on that other good calculated on the basis of its consideration before deducting any amount on account of the trade-in. In that event, the registrant is still entitled to claim a notional input tax credit in respect of the used good. The amendment also does not apply to any supply of a used good made to a registrant before July 1996 otherwise than as a trade-in.

Subclause 25(2)

Exports, Returnable Containers and Value of Used Goods

ETA
176(2) to (4.1)

Subsection 176(2), which outlines the treatment of exports of used goods, is repealed consequential to the elimination of notional input tax credits. Subsection 176(3), which sets out rules for returnable containers, is repealed and replaced by amended subsection 176(1).

Subsection 176(4) is renumbered as subsection 176(2) and is retained for the purposes of the returnable container rules. It is a valuation rule that ensures that a registrant cannot claim excessive notional input tax credits on containers acquired in a non-arm's-length transaction. The repeal of subsection 176(4.1) is consequential to the repeal of the rules relating to specified tangible personal property.

These amendments apply to supplies made after April 23, 1996.

Subclause 25(3)

Restriction on Input Tax Credits

ETA
176(5) to (7)

Subsections 176(5) to (7), which restrict the availability of input tax credits for specified tangible personal property, are repealed. This amendment is consequential to the repeal of the rules relating to specified tangible personal property.

The restrictions on input tax credits under the existing provision will not apply after April 23, 1996. Registrants who hold specified tangible personal property on April 24, 1996 may be able to claim previously denied input tax credits under the change-of-use rules for capital property because the deemed use of the property in non-commercial activities under existing subsection 176(5) will no longer apply.

Clause 26

Agents and Auctioneers

ETA
177

Section 177 deals with supplies made by agents, including auctioneers, on behalf of principals. The existing rules provide for different treatment depending on whether the principal is disclosed or undisclosed and is a registrant or non-registrant. They also set out special rules for auctioneers.

Amended subsection 177(1) sets out the new rules that apply where an agent, acting in the course of a commercial activity, makes a supply of tangible personal property (other than an exempt or zero-rated supply) otherwise than by auction on behalf of a principal who, but for this subsection, would not be required to collect tax on the supply (i.e., the principal is an unregistered person or did not last acquire or use the property in the course of a commercial activity). Amended subsection 177(1) deems these supplies to be taxable. Tax applies on the full selling price of the property.

The general case is that the agent is deemed to have made the supply of the property to the recipient and is therefore the one responsible for accounting for the tax. Under this general rule, the agent is deemed not to have made a supply to the principal. As a result, the agent's service supplied to the principal (i.e., the agent's commission) will not be taxable. The supply made by the agent is deemed not be a supply for the purposes of Part IX of the Act other than section 180, which deals with the situation where a non-resident unregistered person is the legal importer of a good to be sold by an agent on the non-resident's behalf and the non-resident is required to pay tax on the importation. The intention of section 180 is to treat the agent in these cases as having paid the tax the non-resident (i.e., the principal) was required to pay. This would allow the agent to claim an input tax credit for the tax paid by the principal.

An exception to the general case described above is provided where the principal who is not required to collect tax in respect of a particular supply of property is nevertheless a registrant and the property was last used or acquired for consumption or use in a business or adventure or concern in the nature of trade of the principal or in making a taxable supply by way of sale of real property. Some principals in this circumstance may prefer to account for the tax on the property instead of having the agent do so (e.g., where a mixture of items is being sold, and the principal must account for the tax on some of the items because they were used in a commercial activity). In that event, the principal and the agent may elect in writing to have the principal account for the tax. The result is that the principal charges and reports the tax on the supply of the property, pays tax on the agent's services and is entitled to claim an input tax credit for the tax on the agent's services, but not for tax on any other property or service that might be attributable to the supply in respect of which the election was made.

Except where an election is made under new subsection 177(1.1) described below, in all cases where an agent makes a supply on behalf of a principal who is required to collect tax in respect of the supply, the same rules apply as if the supply were made by the principal directly, whether or not the principal is disclosed to the recipient of the supply. The principal will be required to account for that tax in the principal's return, will pay tax on the agent's services, if those are taxable, and may claim the appropriate input tax credits.

New subsection 177(1.1) permits an agent who makes a supply (otherwise than by auction) on behalf of a principal who is required to collect tax in respect of the supply (otherwise than as a consequence of the application of paragraph (1)(*d*)) to elect jointly with the principal to account for the tax collectible on the supply as if the tax were collectible by the agent. Thus, the agent is responsible for collecting, reporting and remitting the tax on the supply. However, the agent and the principal are jointly and severally liable for all obligations that arise upon or as a consequence of the tax becoming collectible.

The amendments to subsections 177(1) and (1.1) generally apply to supplies made after April 23, 1996 by an agent to a recipient on behalf of a principal and to any supply made by the agent to the principal of the services relating to the supply to the recipient. However, the amendments do not apply to a supply of goods where

- the goods were sold by an auctioneer before July, 1996 on behalf of a principal who would not have been required to collect tax if the principal had sold the goods directly, and the auctioneer at any time pays or credits to the principal an amount equivalent to the notional input tax credit available to the auctioneer;

- the goods were sold, otherwise than by auction, before July, 1996 by an agent on behalf of a disclosed principal who would not have been required to collect tax if the principal had sold the goods directly, provided that tax was not charged or collected on the supply; or

- the goods were sold, otherwise than by auction, by an agent on behalf of an undisclosed principal who would not have been required to collect tax, provided the sale was made before July, 1996, and the principal is paid or credited an amount equivalent to the notional input tax credit available to the agent.

The above amended rules, including the application rules described above, apply to supplies of goods by auction made before April 1997 (in relation to which amended subsections 177(1) and (1.1) are to be read without reference to the words "otherwise than by auction"). However, effective for supplies made after March 1997, amended subsection 177(1.2) sets out the rules that apply where an auctioneer, acting on behalf of a principal, in the course of commercial activity of the auctioneer, makes a supply of tangible personal property by auction to a recipient. The supply of tangible personal property is deemed to be made by the auctioneer. Therefore, the auctioneer will be responsible for collecting and remitting the tax on the supply. Also, the auctioneer will be deemed not to have made a supply to the principal. As a result, the auctioneer's service supplied to the principal (i.e., the auctioneer's commission) will not be taxable. The supply made by the auctioneer is deemed not be a supply for the purposes of Part IX of the Act other than section 180, which deals with the situation where a non-resident unregistered person is the legal importer of a good to be auctioned and is required to pay tax on the importation. The intention of section 180 is to treat the auctioneer in these cases as having paid the tax the non-resident (i.e., the principal) was required to pay. This would allow the auctioneer to claim an input tax credit for the tax paid by the principal.

Amendments are also proposed to the *Credit Note Information Regulations* and the *Input Tax Credit Information Regulations*. These amendments will ensure that an invoice issued by any intermediary who is making a supply on behalf of another person may satisfy the documentation requirements that the recipient of the supply must meet in order to be eligible for an input tax credit. This will apply whether or not the intermediary is a legal agent of the other person. The amended regulations will apply in relation to supplies made after April 23, 1996.

Clause 27

Expenses Incurred in Supply of Service

ETA
178

Existing section 178 deals with expenses for which a person is reimbursed by the recipient of a supply of a service made by the person. Where the expense was incurred as an agent of the recipient, it is deemed not to be part of the consideration for the supply of the service, while if the expense was not incurred as an agent of the recipient, it is deemed to be part of the consideration for the service.

Section 178 is unnecessary as the treatment it provides already accords with the legal nature of these transactions. The section is therefore repealed.

This amendment is deemed to have come into force on April 24, 1996.

Clause 28

Approval for Direct Seller

ETA
178.3

Section 178.3 sets out rules for an alternate collection method which allows direct sellers (who have received approval from the Minister of National Revenue to follow this method) to calculate their net tax liabilities for GST purposes as if they made their sales directly to final consumers at the suggested retail price of their products. Their sales to independent sales contractors (who purchase the products from the direct seller for resale to consumers) are disregarded under this method and the independent sales contractors are not required to account for GST on the direct seller's exclusive products.

Subsection 178.3(3) Adjustments to Direct Seller's Net Tax

Existing subsection 178.3(3) provides that where an independent sales contractor supplies an exclusive product of a direct seller to the direct seller, the direct seller may claim a deduction in determining the direct seller's net tax. The existing provision allows the deduction to be claimed in a return for the particular reporting period in which the supply is made or in any subsequent reporting period that ends on or before the day that is four years after the day the particular reporting period ends.

Amended subsection 178.3(3) reduces the limitation period for claiming the deduction from four years to two years. Under the new limitation period, the deduction must be claimed in a return filed within two years after the due date of the return for the reporting period in which the independent sales contractor made the supply.

Subsection 178.3(4) Adjustments for Amounts Paid or Credited

Existing subsection 178.3(4) provides that a direct seller may claim a deduction in determining the direct seller's net tax where an independent sales contractor has made a supply of an exclusive product of the direct seller in circumstances that result in the supply not being subject to tax. A deduction may also be taken where the supply is for consideration less than the suggested retail price of the product. The existing provision allows the deduction to be claimed in the return for the particular reporting period in which the direct seller credits the contractor for the tax or in any subsequent reporting period that ends on or before the day that is four years after the day the particular reporting period ends.

Amended subsection 178.3(4) reduces the limitation period for claiming the deduction from four years to two years. Under the new limitation period, the deduction must be claimed in a return filed within two years after the due date of the return for the reporting period in which the credit was given.

These amendments apply after June 1996. The four-year limitation period will continue to apply where the supply of the exclusive product is made by the independent sales contractor before July 1996.

Clause 29

Approval for Distributor

ETA
178.4

Section 178.4 sets out the rules for an alternate collection method which allows distributors of direct sellers to ignore, for GST purposes, sales to independent sales contractors and, instead, calculate their net tax liabilities as if the sales had been made directly to the final purchasers for the suggested retail price of the products. The method may be used by a distributor who received an approval from the Minister of National Revenue.

Subsection 178.4(3) Adjustments to Distributor's Net Tax

Existing subsection 178.4(3) provides that where an independent sales contractor supplies an exclusive product of a direct seller to a distributor of the direct seller, the distributor may claim a deduction in determining its net tax. The existing provision allows the deduction to be claimed in a return for the particular reporting period in which the supply is made or in any subsequent reporting period that ends on or before the day that is four years after the day the particular reporting period ends.

New subsection 178.4(3) reduces the limitation period for claiming the deduction from four years to two years. Under the new limitation period, the deduction must be claimed in a return filed within two years after the due date of the return for the reporting period in which the independent sales contractor made the supply.

Subsection 178.4(4) Adjustment for Amounts Paid or Credited

Existing subsection 178.4(4) provides that a distributor of a direct seller may claim a deduction in determining net tax where an independent sales contractor has made a supply of an exclusive product of the direct seller in circumstances which result in the supply not being subject to tax. A deduction may also be taken where the supply is for consideration less than the suggested retail price of the product. The existing provision allows the deduction to be claimed in the return for the particular reporting period in which the distributor credits the contractor for the tax or in any subsequent reporting period that ends on or before the day that is four years after the day the particular reporting period ends.

Amended subsection 178.4(4) reduces the limitation period for claiming the deduction from four years to two years. Under the new limitation period, the deduction must be claimed in a return filed within two years after the due date of the return for the reporting period in which the credit was given.

These amendments apply after June, 1996. The four-year limitation period will continue to apply where the supply of the exclusive product is made by the independent sales contractor before July 1996.

Clause 30

Drop Shipments

ETA
179

The overall purpose of section 179 is to ensure that GST applies to goods in Canada that are supplied by an unregistered non-resident person for final consumption in Canada in the same way as tax would apply to the goods if they were acquired from the non-resident outside Canada and imported for that purpose. To achieve this, subsection 179(1) sets out the general rule that, where a registrant transfers physical possession of the goods to another person in Canada on behalf of an unregistered non-resident person, the registrant is liable to collect tax from the non-resident, generally calculated on the fair market value of the property at that time.

Provision is made, through a system of drop-shipment certificates, for registrants to avoid having to account for tax on the goods as long as they are transferring them to other registrants in Canada.

Subclause 30(1)

Exclusion of Property from the Drop-Shipment Rules

ETA
179(1)(*a*)(*i*)

Subsection 179(1) requires a registrant making a drop-shipment of goods (i.e., transferring physical possession of the goods) to a person in Canada on behalf of an unregistered non-resident person to account for tax on the goods. Specifically, the registrant is treated as having made a taxable supply of the goods to the non-resident. These rules ensure that tax is payable in respect of goods transferred to consumers and other unregistered persons by Canadian suppliers on behalf of unregistered non-residents.

The amendment to subparagraph 179(1)(*a*)(*i*) ensures that tax does not apply twice on the same transaction. Under the existing provision, where a non-resident registered person, such as a publisher, contracts with an unregistered non-resident person for services (such as mailing house services) and the unregistered non-resident in turn sub-contracts the service to a registered business in Canada, tax applies twice in respect of the same goods. In this example, the non-resident publisher would have to apply tax on the invoice to the Canadian customer and the registered sub-contractor of the non-resident mailing house would have to charge tax on the fair market value of the publication. To avoid this result, the amendment ensures that the drop-shipment rules in subsection 179(1) do not apply to property of a person who is registered for purposes of the tax.

This amendment is effective January 1, 1991.

Subclause 30(2)

Value of Consideration

ETA
179(1)(*c*)

Existing paragraph 179(1)(*c*) sets out the value of the consideration for the taxable supply of property that is deemed to be made by a registrant to a non-resident person in a drop-shipment situation described by paragraphs 179(1)(*a*) and (*b*). The amendment to paragraph 179(1)(*c*) combines existing subparagraphs (*c*)(ii) and (iii) since, with respect to transfers to consignees, existing subparagraph (*c*)(ii) deals with cases also described in existing subparagraph (*c*)(iii). In addition, the reference to consideration for a supply of a service that is not included in the fair market value of the property is deleted because that fair market value reflects the value of the service.

This amendment applies to supplies made after April 23, 1996.

Subclause 30(3)

Storing or Shipping Service

ETA
179(1)(*d*)

The supply of a service of storing or shipping goods is intended to be taxable in all cases unless it qualifies for zero-rated treatment under Schedule VI. Hence, these services are not relieved of tax under existing subsection 179(2), even where tax on the goods themselves is relieved with the use of the drop-shipment certificate. Consistent with this policy, paragraph 179(1)(*d*) is amended to ensure that it does not apply to the supply of storing or shipping.

This amendment applies to supplies made after April 23, 1996.

Clause 31

International Travel

ETA
180.1

Existing section 5 of Part VII of Schedule VI to the Act zero-rates charges to passengers for goods delivered or services performed on board an international flight while the flight is in Canada; however, the Act is silent on the treatment of supplies on board international vessels. New section 180.1 replaces the existing zero-rating provision with a provision that deems certain supplies made on board an international aircraft or vessel to be made outside Canada.

This amendment applies to supplies made after April 23, 1996.

Subsection 180.1(1) Definitions

New subsection 180.1(1) contains the definition "international flight", which replaces existing section 1 of Part VII of Schedule VI to the Act (see commentary on clause 147). This term refers to a flight of a commercially-operated aircraft where the flight either begins or ends outside Canada. This subsection also contains the definition "international voyage", which refers to a voyage of a commercially-operated vessel where the voyage either begins or ends outside Canada.

Subsection 180.1(2) Delivery While on International Travel

New subsection 180.1(2) deals with supplies to individuals of goods delivered to the individuals, or services wholly performed, on board an aircraft or vessel on an international flight or voyage. This would include, for example, charges for food and beverages served on board the vessel. As the supply is deemed to be made outside Canada, it is beyond the scope of the GST (see the commentary on clause 148 for related changes).

Clause 32

Forfeitures and Extinguished Debt

ETA
182

Section 182 deals with the situation where, as a consequence of the breach, modification or cancellation of an agreement for the making of a taxable supply, amounts are paid or forfeited by a person to a registrant otherwise than as consideration for the supply. The section also deals with situations where a debt or other obligation of a registrant to a person is reduced or extinguished without payment on account of the debt or obligation. In both cases, the registrant is treated as having made a taxable supply to the other person and as having collected tax equal to 7/107ths of the amount paid, forfeited, reduced or extinguished. The person paying or forfeiting the amount is deemed to have paid tax and, if a registrant, may be entitled to an input tax credit for that tax.

Subsection 182(1) Forfeiture and Extinguishment of Debt

Subsection 182(1) is amended to merge the current subsections 182(1) and (2). New subsection 182(1) sets out the rules where an amount is paid or forfeited to a registrant or a debt or other obligation of the registrant is reduced or extinguished.

Amended subsection 182(1) specifies that the consideration fraction of the amount paid or forfeited, or by which the debt or obligation is reduced or extinguished, is deemed to be consideration for the supply under the agreement that was breached, modified or terminated. In addition, the amended subsection clarifies that it is the recipient of the supply under that original agreement that is considered to have paid consideration equal to the paid or forfeited amount or amount by which the debt was reduced or extinguished. That recipient would then be entitled to claim an input tax credit for the tax on that deemed consideration provided all other conditions for claiming the credit are satisfied, such as the condition that the original supply was for consumption, use or supply by the recipient in the course of a commercial activity of the recipient. If a third party makes a damage payment in respect of the supply to the original recipient, the third party is not eligible for an input tax credit in respect of the payment.

Subsections 182(2) and (2.1) Transitional

New subsection 182(2) simply replaces the transitional rules contained in existing paragraphs 182(1)(*b*) and (2)(*b*).

New subsection 182(2.1) specifies that the transitional rules in Division IX that applied for purposes of the introduction of the GST do not apply for the purposes of subsection 182(1). This provision is not necessary under the existing legislation because existing subsection 182(1) deems a new supply to be made and the transitional rules for the GST specify that the tax applies to any supply deemed to have been made. In contrast, amended subsection 182(1) treats the amount paid or forfeited or amount by which the debt or obligation is reduced or extinguished as consideration for the original supply. Therefore, new subsection 182(2.1) is added to continue to ensure that the deemed consideration under subsection 182(1) for a taxable supply does not fall outside the scope of the tax because of the transitional rules.

The amendments to section 182 come into force on April 24, 1996.

Clause 33

Seizures and Repossessions

ETA
183

Section 183 provides rules for the application of the GST to property seized or repossessed by a creditor.

Subclause 33(1)

ETA
183(1)(*d*)

Paragraph 183(1)(*d*) provides that, where a creditor seizes or repossesses real property from a debtor that would have been entitled to a credit under section 193 or a rebate under section 257 if the debtor had instead sold the property under taxable conditions, the debtor is able to claim the credit or rebate based on the fair market value of the property at the time it is seized or repossessed. This removes tax embedded in the value of the property so that the property is not subject to double tax – i.e., when the debtor originally purchased the property and when the creditor resupplies it on a taxable basis after the seizure or repossession.

Paragraph 183(1)(*d*) is amended as a result of the addition of new Part V.I of Schedule V, which sets out exemptions for charities that are found in existing section 25 of Part V of that Schedule. This amendment ensures that paragraph 183(1)(*d*) continues to apply to the same supplies of real property that are covered under the existing wording.

This amendment applies to supplies deemed to have been made by debtors to creditors after 1996.

Subclauses 33(2) and (3)

ETA
183(5)(*a*) and (6)(*a*)

Subsections 183(5) and (6) apply where a creditor appropriates for the creditor's own use property that the creditor seized or repossessed. The amendments to paragraphs 183(5)(*a*) and (6)(*a*) are consequential to the repeal of the special rules under section 176 pertaining to specified tangible personal property such as artwork (see commentary on clause 25). As a result of the changes to section 176, specified tangible personal property having a fair market value in excess of a prescribed amount will no longer be deemed to be used in activities that are not commercial activities. Accordingly, these deeming rules in the case of seized or repossessed property are repealed.

If specified tangible personal property was seized or repossessed from a person who would have been required to charge tax had they sold the property, the creditor will continue to be required to self-assess tax when the property is appropriated for the creditor's own use. However, as a result of the amendment, the creditor will be entitled to claim an input tax credit for the self-assessed tax if the property is used in commercial activities. As is the case under the existing rules, the creditor is not entitled to a notional input tax credit in respect of such property for any tax previously paid by the debtor from whom the property was seized or repossessed. Finally, if the creditor uses the specified tangible personal property in commercial activities, the creditor will have to charge tax on any subsequent resale of the property.

Also, the *Specified Tangible Personal Property (GST) Regulations* will be amended to apply for the purposes of section 183 instead of section 176. There will be no changes to the prescribed amounts.

The amendments apply after April 23, 1996. Registrants who hold specified tangible personal property on April 24, 1996 may be able to claim previously denied input tax credits under the change-of-use rules for capital property because the deemed use of the property in non-commercial activities under existing subsections 183(5) and (6) will no longer apply.

Subclause 33(4)

ETA
183(7)

Subsection 183(7) applies where a creditor sells property that was previously seized or repossessed. The amendment to subsection 183(7) removes a reference to supplies deemed to have been made under section 177 and is consequential to the amendments to section 177 (see commentary on clause 26). Since section 177 no longer deems a supply to be made between a principal and an agent, the reference to that section is no longer necessary.

The amendment applies to property that is supplied by the creditor after April 23, 1996.

Subclauses 33(5) and (6)

ETA
183(7)(*b*) and (8)(*b*)

The amendments to subparagraphs 183(7)(*b*) and (8)(*b*) are consequential to the repeal of the special rules under section 176 pertaining to specified tangible personal property (see commentary on clause 25). That section will no longer refer to prescribed amounts in respect of such property. The *Specified Tangible Personal Property*

(GST) Regulations will be amended to apply for the purposes of section 183 instead of section 176. There will be no changes to the prescribed amounts.

Also, the reference to "used specified tangible personal property" has been replaced by a reference to "specified tangible personal property". As a result, if a creditor seizes or repossesses specified tangible personal property that had been held as inventory of an unregistered small supplier, the creditor will not be eligible for a credit under this section on the resupply of the property.

The amendment applies to property that is supplied by a creditor after April 23, 1996.

Subclause 33(7)

Debt Security, etc.

ETA
183(10)

Existing subsection 183(10) provides that powers of sale and other similar rights exercisable under a debt security in respect of a property will be treated as seizures and repossessions.

As currently drafted, the deeming provisions contained in this subsection apply only for the purposes of section 183. Subsection 183(10) is amended to provide that the deeming provisions apply for the purposes of all of Part IX.

The subsection is also amended to clarify, for greater certainty, that the deeming rules apply in circumstances where a creditor causes a supply of property as a result of the creditor exercising the creditor's right under an Act of Parliament or of the legislature of a province. For example, where a municipality is causing the supply of property as a consequence of the non-payment of municipal taxes, the deeming rules apply. The wording changes also more accurately describe a right under a debt security as a right under an agreement relating to the debt security.

The amendments to subsection 183(10) apply to supplies made after April 23, 1996. They also apply to supplies made on or before that day unless the supply was treated as non-taxable – i.e., either no amount was, on or before that day, charged or collected as tax or an amount was so charged or collected but, before that day, the Minister of National Revenue received an application under subsection 261(1) for a rebate of that amount.

Subclause 33(8)

Redemption of Property

ETA
183(10.1)

Amended subsection 183(10) clarifies that powers of sale and other similar rights exercisable under the law of Canada or a province, or under an agreement relating to a debt security, in respect of a property are treated as seizures and repossessions. However, there are situations where the person from whom the property was transferred has, under such a law or agreement, a right to redeem the property.

New subsection 183(10.1) provides rules relating to cases where a property is redeemed by an original debtor after the creditor has caused a supply of the property to a purchaser who has paid tax with respect to that supply.

To illustrate how the rules apply in this circumstance, consider the example of a municipality that causes the supply of property of one of its residents (the "original debtor") as a consequence of the resident's non-payment of municipal taxes. Assume the property is purchased by a purchaser at an auction. Assume also that, under the applicable law, the original debtor has a right to redeem the property within a certain period of time. In those circumstances, new subsection 183(10.1) provides that the redemption of the property is considered to be a supply by way of sale by the auction purchaser for no consideration. The result is that the original debtor is not required to pay tax twice on the same property – when the debtor originally purchased it and when the debtor redeems it. Except for purposes of section 183, the debtor is deemed not to have ever supplied the property or to have re-acquired it. Therefore, the seizure and redemption does not affect the result of any future changes in use or sales of the property by the debtor. Also, where the original debtor reimburses the auction purchaser or the municipality an amount on account of the GST the auction purchaser paid in acquiring the property, the original debtor is deemed to have paid tax in error equal to the amount so reimbursed. This enables the debtor to claim a rebate under section 261 for the amount.

As far as the auction purchaser in this example is concerned, when that purchaser is reimbursed by the original debtor for an amount on account of the GST the purchaser paid, new subsection 183(10.1) provides that any input tax credit or rebate that the purchaser claimed with respect to that tax is added back in determining the purchaser's net tax for the reporting period in which the property is redeemed. This rule ensures that the auction purchaser does not, in effect, recover the same amount of tax twice. Furthermore, new subsection 183(10.1) precludes the auction purchaser from claiming the tax paid on the property as an input tax credit or rebate after the redemption occurs.

Related amendments are also made to sections 193 and 257 to ensure that the original debtor cannot claim an input tax credit or a rebate pursuant to those sections in respect of the deemed seizure or repossession until the time limit for redeeming the property has expired without the redemption right being exercised (see commentary on clauses 39 and 68).

New subsection 183(10.1) applies to redemptions of property occurring after April 23, 1996.

Clause 34

Supply of Real Property to Insurer on Settlement of Claim

ETA
184

Section 184 provides rules for the treatment of property transferred to an insurer in the course of settling an insurance claim.

Subclause 34(1)

ETA
184(1)(*d*)

Paragraph 184(1)(*d*) provides that, where an insurer seizes or repossesses real property from an insured that would have been entitled to a credit under section 193 or a rebate under section 257 if the insured had instead sold the property under taxable conditions, the insured is able to claim the credit or rebate based on the fair market value of the property at the time it is transferred to the insurer.

Paragraph 184(1)(*d*) is amended as a result of the addition of new Part V.I of Schedule V, which sets out exemptions for charities that are found in existing section 25 of Part VI of that Schedule. This amendment ensures that paragraph 184(1)(*d*) will continue to apply to the same supplies of real property that are covered under the existing wording.

This amendment applies to supplies deemed to have been made by insured persons to insurers after 1996.

Subclauses 34(2) and (3)

ETA
184(4)(*a*) and (5)(*a*)

Subsections 184(4) and (5) apply where an insurer appropriates for the insurer's own use property that was transferred to the insurer on the settlement of a claim. The amendments to paragraphs 184(4)(*a*) and (5)(*a*) are consequential to the repeal of the special rules under section 176 pertaining to specified tangible personal property such as artwork (see commentary on clause 25). As a result of the changes to section 176, specified tangible personal property having a fair market value in excess of a prescribed amount will no longer be deemed to be used in activities that are not commercial activities. Accordingly, these deeming rules in the case of property transferred to an insurer are repealed.

If specified tangible personal property was transferred to the insurer from a person who would have been required to charge tax had they sold the property, the insurer will continue to be required to self-assess tax when the property is appropriated for the insurer's own use. However, as a result of the amendment, the insurer will be entitled to claim an input tax credit for the self-assessed tax if the property is used in commercial activities. As is the case under the existing rules, the insurer is not entitled to a notional input tax credit in respect of such property for any tax previously paid by the claimant from whom the property was transferred to the insurer. Finally, if the insurer uses the specified tangible personal property in commercial activities, the insurer will have to charge tax on any subsequent resale of the property.

Also, the *Specified Tangible Personal Property (GST) Regulations* will be amended to apply for the purposes of section 184 instead of section 176. There will be no changes to the prescribed amounts.

The amendments apply after April 23, 1996. Insurers who hold specified tangible personal property on April 24, 1996 may be able to claim previously denied input tax credits under the change-of-use rules for capital property because the deemed use of the property in non-commercial activities under existing subsections 184(4) and (5) will no longer apply.

Subclause 34(4)

ETA
184(6)

Subsection 184(6) applies where an insurer sells property that was previously transferred to the insurer on settlement of a claim. The amendment to subsection 184(6) removes a reference to supplies deemed to have been made under section 177 and is consequential to the amendments to section 177 (see commentary on clause 26). Since section 177 no longer deems a supply to be made between a principal and an agent, the reference to that section is no longer necessary.

The amendment applies to property that is supplied by an insurer after April 23, 1996.

Subclauses 34(5) and (6)

ETA
184(6)(*b*) and (7)(*b*)

The amendments to subparagraphs 184(6)(*b*) and (7)(*b*) are consequential to the repeal of the special rules under section 176 pertaining to specified tangible personal property (see commentary on clause 25). That section will no longer refer to prescribed amounts in respect of such property. The *Specified Tangible Personal Property (GST) Regulations* will be amended to apply for the purposes of section 184 instead of section 176. There will be no changes to the prescribed amounts.

Also, the reference to "used specified tangible personal property" has been replaced by a reference to "specified tangible personal property". As a result, if an insurer acquires specified tangible personal property on settlement of a claim that had been held as inventory of an unregistered small supplier, the insurer will not be eligible for a credit on the resupply of the property.

The amendment applies to property that is supplied by an insurer after April 23, 1996.

Clause 35

Financial Services – Input Tax Credits

ETA
185

Existing subsection 185(1) simplifies the operation of the tax for persons that are not financial institutions and that, in the course of their commercial activity, also provide some incidental financial services. The section deems the inputs relating to the incidental financial services to be for use in the person's commercial activities. As a result, the person is not required to apportion inputs.

Under amended subsection 185(1), listed financial institutions and persons that are financial institutions because of paragraph 149(1)(*b*) will continue to be excluded from this treatment. Nonetheless, the amended section permits persons that are financial institutions only because of new paragraph 149(1)(*c*) (see commentary on clause 11) to be treated like non-financial institutions except with respect to their activities related to credit cards or charge cards issued by them, or activities involving the granting of advances, loans or credit.

For example, if a registrant, in the course of its commercial activity of retailing goods, made over $1 million of income from interest and fees on its credit card accounts, it would be a financial institution because of paragraph 149(1)(*c*). Assuming the registrant did not also exceed the financial income threshold under paragraph 149(1)(*b*), it would be able to claim input tax credits in respect of inputs for use in its commercial activities and for use in related financial activities, such as its investment or capital raising activities, except those in respect of the credit card operations.

This amendment applies to property and services acquired or imported in taxation years beginning after April 23, 1996.

Clause 36

Conversion of Real Property to Residential Use

ETA
190(1)(*f*)(ii)

Subsection 190(1) applies where a person converts non-residential real property into a residential complex without constructing or substantially renovating the complex. Under paragraph 190(1)(*f*), the person is deemed to be a builder. Nonetheless, an exception to that rule is made for a trust, all the beneficiaries of which are individuals and all the contingent beneficiaries of which are individuals or charities, where the trust converts the property for the purpose of using it as a place of residence for a beneficiary.

Subparagraph 190(1)(*f*)(ii) is amended as a consequence of the new definition "personal trust" in subsection 123(1) (see commentary on the definition of that term under clause 1). As a result of the amendment, the exception for trusts will apply to all testamentary trusts, but will not apply to *inter vivos* trusts, the beneficial interests in which are supplied by the trust or the settlor of the trust. The requirement under the existing legislation that a trust's beneficiaries (other than contingent beneficiaries) all be individuals and its contingent beneficiaries all be individuals, charities or public institutions, will continue to apply to *inter vivos* trusts but not to testamentary trusts.

This amendment applies after April 23, 1996.

Clause 37

Self-Supply of Real Property

ETA
191

The purpose of section 191 is to ensure that the GST applies to newly constructed or substantially renovated premises once they are rented or otherwise occupied as places of residences before being sold since the subsequent sales of those residences will generally be exempt as used housing. That section provides that, in these circumstances, the builder of a residential complex is treated as having sold and repurchased the complex. As a result, the builder is required to account for GST on the fair market value of the complex.

Subclause 37(1)

Exception for Communal Organizations

ETA
191(6.1)

New subsection 191(6.1) specifically excludes from the application of the self-supply rules certain religious communal organizations for which the *Income Tax Act* provides special treatment with respect to the businesses they carry on in support of their members. Typically, in these organizations, title to multiple-unit residential complexes is held by an incorporated entity. However, the residential complexes are generally constructed by the members of these organizations for the personal use of the members.

This amendment is effective January 1, 1991.

Subclause 37(2)

Remote Work Sites

ETA
191(7)

Existing subsection 191(7) specifically excludes from the self-assessment rules under section 191 registrants who construct residential complexes at remote work sites for their employees where the employees could not reasonably be expected to establish and maintain a self-contained residence because of the remoteness of the work site.

Subsection 191(7) is amended to extend this exclusion to registrants who have constructed such residential complexes for their contractors or sub-contractors or employees thereof.

This treatment complements the treatment available under the *Income Tax Act*, which provides for a deduction from employment income to a taxpayer for any expense incurred or allowance received for board and lodging at a remote work site where the taxpayer maintains a separate place of residence.

This amendment is effective as of January 1, 1991.

Clause 38

Subsidized Residential Complexes

ETA
191.1

Section 191 ensures that the GST applies to newly constructed or substantially renovated premises once they are rented or otherwise occupied as places of residences before being sold, since the subsequent sales of those residences will generally be exempt as used housing. In these circumstances, the builder of a residential complex is treated as having sold and repurchased the complex. As a result, the builder is required to self-assess GST on the fair market value of the complex.

New section 191.1 provides for special self-supply rules for government-funded residential buildings designed to be occupied by individuals having special needs or limited financial resources, in recognition of the fact that it is often difficult to ascertain the "fair market value" of such buildings. This new provision ensures that the builder must account for an amount of tax that is at least equal to the total of all tax that was payable by the builder in respect of real property forming part of the complex or addition or in respect of improvements thereto. Where the builder is registered for the tax, the builder will have been entitled to claim input tax credits for these amounts so the net effect of section 191.1 will be to at least recapture the amount of those credits.

New section 191.1 generally applies after April 23, 1996. However, it does not apply if the construction or substantial renovation of a residential complex began on or before that day and is substantially completed within two years after that day where the builder, on or before that day, received government funding or has a reasonable expectation of receiving government funding in respect of the residential complex.

Clause 39

Redemption of Real Property

ETA
193(3)

Section 193 provides that, where a registrant makes a taxable sale of real property, the registrant may claim, at the time of the sale, an input tax credit for previously non-creditable or non-rebatable tax paid by the registrant in respect of the property.

New subsection 193(3) is consequential to the addition of new subsection 183(10.1), which deals with the situation where the original debtor has a right to redeem the property (see commentary on subclause 33(8)). New subsection 193(3) ensures that the input tax credit may not be claimed by the debtor upon the seizure or repossession of the property until the period during which the property may be redeemed has expired without that right being exercised. In the event that the period does so expire at a particular time, new paragraph 193(3)(*b*) deems the input tax credit of the debtor to be for the reporting period that includes that time.

Parallel amendments are made to section 257 in relation to property of a debtor that is a non-registrant (see commentary on clause 68).

This amendment is effective on April 24, 1996.

Clause 40

Capital Property Used in Supply of Financial Services

ETA
198

Under existing section 198, to the extent that a person that is not a financial institution uses capital property in the provision of financial services relating to the person's commercial activities, the property is treated as being used in those commercial activities. As a result, the person is not required to apportion inputs.

The amended section extends the treatment to persons that are financial institutions only because of new paragraph 149(1)(*c*) (see commentary on clause 11). However, they will be treated as using capital property in exempt activities to the extent it is used in activities related to credit cards or charge cards issued by them, or activities involving the granting of advances, loans or credit.

This amendment applies to the use of property in taxation years beginning after April 23, 1996.

Clause 40.1

Individual Beginning Use in Commercial Activities

ETA
208(2)

Input tax credits may not claimed in respect of real property to the extent that it is not for use in commercial activities. Furthermore, registrants who are individuals are not entitled to claim input tax credits in respect of real property that is primarily for the personal use or enjoyment of the registrant or a related individual. Subsection 208(2) is intended to enable a registrant to claim in input tax credit when increasing the use of such property in commercial activities, provided it is not primarily for the personal use or enjoyment of the registrant or a related individual. This is achieved by deeming the registrant to have acquired and paid tax in respect of the property.

This subsection was amended, effective October 1, 1992, to provide that the determination of the amount of tax that is deemed to have been paid by the registrant upon the change in use is based on the tax payable on the last acquisition of the property and improvements thereto. However, the wording changes also had the unintended effect of limiting the application of the provision to circumstances where the use of the property changed from being primarily personal use. A conversion from use in exempt business activities to use in commercial activities is no longer covered by the existing wording. To correct this, subsection 208(2) is amended, retroactive to October 1, 1992, to maintain its application to the latter case.

Clause 41

Rebate for Returned or Defective Goods

ETA
215.1

This section provides a rebate of tax to importers of goods in certain situations.

Subsection 215.1(1) Rebate for Returned Goods

Existing subsection 215.1(1) provides for a rebate of tax paid on goods imported on consignment or approval where the goods are exported within sixty days for return to the supplier without having been used or consumed in Canada except on a trial basis. Existing paragraph 215.1(1)(*c*) allows the rebate to be filed within four years after the tax was paid. Amended paragraph 215.1(1)(*c*) reduces the limitation period from four years to two years. This new limitation period is consistent with similar two-year limitation periods for abatements and refunds under the *Customs Act.*

Subsection 215.1(2) Rebate for Goods Damaged

Existing subsection 215.1(2) provides for a rebate of tax paid on goods imported under certain circumstances by an unregistered small supplier where an abatement or refund of the duties paid on the goods has been granted under the *Customs Act* because the goods were damaged, of inferior quality, defective, did not include the correct quantity or were not the goods ordered. Existing paragraph 215.1(2)(*d*) allows the rebate to be filed within four years after the tax was paid. Amended paragraph 215.1(2)(*d*) reduces the limitation period from four years to two years. This new limitation period is consistent with the current limitation period for abatements and refunds under the *Customs Act.*

Subsection 215.1(3) Rebate for Goods Not Subject to Duty

Existing subsection 215.1(3) provides for a rebate in the same circumstances (and subject to the same conditions) as set out in subsection 215.1(2) except that the goods in this case are not subject to duty. Existing paragraph 215.1(3)(*d*) allows the rebate to be filed within four years after the tax was paid. Amended paragraph 215.1(3)(*d*) reduces the limitation period from four years to two years.

These amendments apply after June 1996. However, the four-year limitation period will continue to apply where the tax was paid before July 1996.

Clause 41.1

Application of Part IX and the *Tax Court of Canada Act*

ETA
216(5)

Subsection 216(5) provides that an appeal to the Tax Court of Canada from a determination of the tax status of goods (for purposes of Division III of Part IX) proceeds in a manner consistent with an appeal of an assessment under Division VII of the *Excise Tax Act*. This amendment is consequential on the renumbering of existing subsection 301(1) as subsection 301(1.1) under subclause 82(1).

The amendment applies to any appeal from a decision made under section 63 or 64 of the *Customs Act* in respect of a determination of tax status made after April 1996.

Clause 42

Tax on Imported Taxable Supplies

ETA
217

Division IV of Part IX applies tax to certain supplies made outside Canada, such as supplies of services and intangible personal property made to residents of Canada. It requires persons to self-assess and remit the tax. Section 217 contains definitions of terms that apply for purposes of Division IV.

Section 217 is amended by eliminating the definition "reporting period". The existing definition differs from that in subsection 123(1) only in that it permits non-registrants to have reporting periods that are calendar quarters for purposes of Division IV whereas they are assigned calendar month reporting periods for Division II purposes. The repeal of the definition "reporting period" in section 217 means that, for purposes of Division IV, non-registrants will have reporting periods determined under subsection 245(1). Therefore, they will be obliged to report and remit the self-assessed tax under Division IV within one month after the month in which it becomes payable. It should be noted that the calendar month reporting period applies equally to non-registrants that are listed financial institutions due to the amendment to subsection 245(1) (see commentary on clause 55).

The amendments to the English and French versions of section 217 of the Act in subclauses 42(1) and (3) to (6) are consequential on the repeal of the definition "reporting period" in section 217.

Subclause 42(2) amends subparagraph 217(*a*)(iv) of the definition "imported taxable supply" in section 217 by adding a reference to a custodial or nominee service in respect of precious metals. The term "precious metal" is defined in subsection 123(1). As a result of this amendment, a resident of Canada that acquires such a service outside Canada, otherwise than for consumption, use or supply exclusively in commercial activities, is required to self-assess tax. Reference may also be made to the amendment to section 17 of Part V of Schedule VI zero-rating a custodial or nominee service in relation to precious metals when supplied in Canada to a non-resident person.

These amendments are effective January 1, 1997.

Clause 43

Preparation of Returns

ETA
219

Under section 219, each person liable to pay tax under Division IV of Part IX in respect of imported taxable supplies is required to file a return and account for the tax in that return.

The amendment to section 219 will allow a registrant to account for the Division IV tax becoming payable in a reporting period in the registrant's return for that period under Division II. For non-registrants, however, the requirement that a special return be filed will remain, and the Division IV tax will have to be paid by the end of the month following the calendar month in which it becomes payable.

This amendment is effective January 1, 1997.

Clause 43.1

Collection of Tax

ETA
221(4)

Subsection 221(4) defines terms used in subsection 221(3) which absolves a carrier from having to collect tax on a supply of freight services in certain circumstances. Existing subsection 221(4) provides that the term "carrier" has the meaning assigned by Part VII of Schedule V. The subsection is amended to remove this reference to "carrier" since the latter term is no longer defined in that Part but in subsection 123(1) which applies to all of Part IX of the Act.

This amendment is effective January 1, 1991.

Clause 44

Remittance of Tax

ETA
225

Section 225 sets out the general rules for determining a person's net tax for a reporting period, including rules related to the claiming of input tax credits.

Subsection 225(3) Restriction

Subsection 225(3) ensures that there is no double counting of an amount that would reduce net tax for a reporting period. The amendment clarifies that once an amount has been "claimed" in a return, it cannot be claimed again, whether or not that amount was allowable as an input tax credit or deduction in the first return.

New paragraphs 225(3)(*a*) and (*b*) allow a person to claim an input tax credit a second time in certain cases. Paragraph 225(3)(*a*) allows a person to re-claim an input tax credit where the person was not entitled to make the previous claim because the documentation requirements of subsection 169(4) had not been met. Under paragraph 225(3)(*b*), where the Minister has not already disallowed the previous claim, the person claiming the input tax credit must notify the Minister that an error was made in making the previous claim. Where the error is not reported to the Minister at least three months before the time limited by subsection 298(1) for assessing the net tax, the person must also re-pay the input tax credit that was previously claimed and any applicable penalty and interest to the Receiver General.

Subsection 225(3.1) Restriction

This subsection provides that an amount otherwise qualifying in a particular period as an input tax credit may not be claimed if, before the end of the period, the amount became refundable or was remitted to the registrant under some other provision or pursuant to any other Act of Parliament.

The amendments to subsection 225(3) and new subsection 225(3.1) come into force on April 23, 1996.

Subsection 225(4) Limitation

Existing subsection 225(4) allows a registrant to claim an input tax credit within four years after the due date of the return for the reporting period in which the credit could first have been claimed. Amended subsection 225(4) reduces the limitation period from four years to two years for "specified persons" as defined in new subsection 225(4.1). Under the new limitation period, a specified person may claim an input tax credit in a return filed on or before the due date of the return for the person's last reporting period that ends within two years after the beginning of the first reporting period for which the credit could have been claimed.

Amended subsection 225(4) extends the two year period for claiming an input tax credit in two cases. First, where a supplier does not charge the tax on a supply when it becomes payable, a specified person will be allowed to claim the input tax credit in a return filed on or before the due date of the return for the person's last reporting period that ends within two years after the beginning of the reporting period in which the tax is charged. However, the credit generally cannot be claimed after the expiration of the general four year period for claiming input tax credits. Second, where an input tax credit of a specified person is claimed in error by another person within the two year period, the error may be corrected within the general four year period.

Under new paragraph 225(4)(*c*), in any case where a person's supplier has failed to charge tax. until after the four year period has expired, the person will be permitted to claim the input tax credit in the return for the period in which the tax is paid, provided that the supplier discloses in writing to the person that the Minister has assessed the supplier for that tax and the person pays that tax to the supplier before the input tax credit is claimed by the person.

Generally, amended 225(4) applies to all claims for input tax credits, other than input tax credits for reporting periods ending before July 1996 that are claimed in a return under Division V of Part IX of the Act filed before July 1998. However, the extended period for claiming input tax credits in new paragraph 225(4)(*c*) applies to all input tax credit claims described in that paragraph.

Subsection 225(4.1) Meaning of "specified person"

New subsection 225(4.1) defines "specified person" for the purposes of subsection 225(4). A "specified person" is a person that is a listed financial institution described in any of subparagraphs 149(1)(*a*)(i) to (x) or a person whose threshold amounts as determined under subsection 249(1) exceed $6 million in each of their two preceding fiscal years, other than a person whose supplies (other than supplies of financial services) are all or substantially all taxable supplies. Registered charities (other than municipalities, hospital authorities, school authorities, public colleges and universities who exceed the $6 million threshold) are excluded from the definition "specified person".

New section 225(4.1) is effective on July 1, 1996.

Clause 45

Net Tax Calculation for Charities

ETA
225.1

New section 225.1 provides for a new simplified accounting method for charities to use in determining their net tax remittable. It should be noted that the definition "charity" in subsection 123(1) is amended, concurrent with the introduction of this section. The term "charity" will not include a "public institution", as newly defined in subsection 123(1). Consequently, this new method for determining net tax does not apply to persons that, although registered charities for income tax purposes, fall into the category of "public institution" for GST purposes (see commentary on the definitions "charity" and "public institution" under clause 1).

Under the method set out in new section 225.1, charities registered for GST purposes will continue to charge and collect tax on all their taxable supplies but will remit only a portion of the tax collected on their leases, rentals and sales of non-capital property and services. This method will simplify compliance for charities as it will remove the need for them to apportion their inputs on the basis of taxable and exempt supplies. They will not claim input tax credits on their non-capital inputs nor on capital or real property that is not used primarily in commercial activities; but they will be entitled to claim a 50-per-cent rebate of tax paid on all those inputs. They will continue to claim full input tax credits on their capital and real property that is used primarily in commercial activities.

Paragraph 225.1(1) Meaning of "specified supply"

New subsection 225.1(1) defines a "specified supply", which is a supply in respect of which a GST-registered charity following the new simplified accounting method will charge tax at a rate of seven per cent but remit only 60 per cent of that tax. A specified supply is defined as a taxable supply other than:

- a sale of real property or capital property;

- a deemed supply as a result of the receipt of an amount under a warranty or of a rebate from a manufacturer or other vendor;

- a deemed supply of seized personal property;

- a deemed supply of property appropriated for the benefit of a member of the charity; and

- a supply to an employee of the charity that gives rise to a taxable benefit for income tax purposes.

Under this method, charities will not be required to account for tax in respect of amounts they receive under warranty claims or rebates from manufacturers or other vendors, nor will they have to account for tax if, as creditors, they seize personal property and take it for their own use.

Tax will be accounted for on their other supplies pursuant to the formula set out in new subsection 225.1(2).

Subsection 225.1(2) Net Tax

New subsection 225.1(2) sets out the formula for determining a charity's net tax for a reporting period under the simplified accounting method.

The amounts the charity must add in determining its net tax remittance in this manner are:

- 60 per cent of tax collectible on specified supplies as defined in new subsection 225.1(1), for example, taxable rentals and sales of services or non-capital property;

- the total seven-per-cent tax collectible on sales of capital and real property used primarily in commercial activities including deemed taxable sales of capital and real property;

- any tax deemed payable on property appropriated to or for the benefit of a member or relative of a member of the charity;

- any tax deemed payable on goods or services provided to an employee of the charity where that taxable supply gives rise to a taxable benefit for income tax purposes;

- any tax payable on supplies of goods the charity makes as agent on behalf of a principal with whom the charity has made an election to account for the tax on the supplies under new subsection 177(1.1);

- any amount required to be taken into account as tax as a result of the recovery of a bad debt relating to a taxable sale of real property or capital property by the charity;

- the total tax adjustments received in the period on acquisitions of real property or capital property for which the charity has previously claimed input tax credits; and

- any amount carried forward from a designated (dormant) reporting period and required under subsection 238.1(4) to be added to net tax.

The amounts that are deductible in determining the net tax remittance under this method for the reporting period are:

- input tax credits for purchases of, or improvements to, real property and capital property claimed for that reporting period;

- 60 per cent of the total of the tax adjustments given in the period to recipients of specified supplies made by the charity and of any rebates credited in the period by the charity to certain non-residents or to recipients of certain supplies relating to foreign conventions;

- any tax adjustment given, tax written off as a bad debt, or new housing rebate credited during the period in respect of the sale of real property or capital property by the charity; and

- any input tax credit that the charity was entitled to claim and is carried forward from a reporting period in respect of which the charity was not required to use this method in determining its net tax (i.e., a reporting period beginning before 1997 or a reporting period during which an election under subsection (7) by the charity was in effect).

Subsection 225.1(3) Restriction

New subsection 225.1(3) ensures there is no double inclusion of amounts required to be added in determining net tax.

Subsection 225.1(4) Restriction

New subsection 225.1(4) precludes a GST-registered charity from including any amount in the total deductions from net tax for a reporting period if the amount was claimed or included in determining net tax for a previous reporting period unless the charity was not entitled to claim the amount for that preceding period only because the charity did not satisfy the documentation requirements under subsection 169(4) and, where the previous claim was not already disallowed, the charity notifies Revenue Canada of the error in the previous return. Where the charity does not report the error at least three months before the limitation period for assessing the preceding period expires, the charity must re-pay the credit previously claimed along with any applicable penalty and interest.

Subsection 225.1(5) Application

New subsection 225.1(5) provides that sections 231 to 236 do not apply to a GST-registered charity for purposes of determining the net tax of the charity under the new simplified method, except as otherwise provided in section 225.1.

Section 231 provides for bad-debt relief. The net tax formula in section 225.1 denies bad-debt relief to charities except with respect to their sales of real property and capital property on which they collect tax. To simplify the rules for charities, bad-debt relief on other supplies is reflected in the 60-per-cent remittance rate applicable to those supplies.

Similarly, under the formula in subsection 225.1(2), charities are restricted to claiming 60 per cent of the amount of their adjustments of tax under section 232 with respect to their taxable supplies of non-capital goods and services since they are required under this formula to remit only 60 per cent of the tax collectible on those supplies. Charities will be entitled to the full deduction under section 232 with respect to sales of real property or capital property.

The treatment of patronage dividends as set out in section 233 does not apply to charities following the method set out in section 225.1.

The net-tax formula in subsection 225.1(2) provides for deductions from net tax relating to assignments of the new housing rebate. However, with respect to assignments of non-resident rebates, charities will be entitled under this formula to deductions of only 60 per cent of any rebates paid or credited to the non-residents as provided in subsection 234(2) since the charities will be required to remit only 60 per cent of the tax on the supplies to those non-residents.

The rules relating to leased passenger vehicles in section 235 do not apply to registered charities using this method of determining net tax.

Finally, subsection 225.1(5) explicitly provides that section 236, which requires a recapture of input tax credits in respect of meals and entertainment, does not apply to a charity following the new simplified accounting method. This provision is for greater certainty only since, under the streamlined method of accounting, charities are not entitled to claim input tax credits in respect of meals, entertainment or allowances.

Subsection 225.1(6) Election

Subsection 225.1(6) allows charities that make zero-rated supplies in the ordinary course of business and charities whose supplies are all or substantially all taxable supplies to elect out of using the method for determining net tax set out in new section 225.1. These charities do not face the difficulties of apportioning inputs between taxable and exempt supplies to the same extent as other charities and may be better off following the normal rules whereby they may claim input tax credits in respect of all inputs attributable to their taxable supplies.

Any charity that opts out of the simplified accounting method under new section 225.1 will not be entitled to use any other streamlined accounting method prescribed under section 227, except for the streamlined input tax credit calculation, which smaller charities may use pursuant to new subsection 225.1(10).

Once a charity that is eligible to opt out of using the method under section 225.1 does so, it will not subsequently be forced to use the method if its circumstances change, such as if it were no longer to make zero-rated supplies, or if it were to begin to make a greater percentage of exempt supplies. Therefore, once a charity has made this election, it does not have to keep track of whether it is still making zero-rated supplies in the course of its business or the extent to which it still makes taxable supplies. The charity will continue following the general rules under section 225 until the charity chooses to revoke its election.

Subsection 225.1(7) Form and Content of Election

Subsection 225.1(7) sets out the rules for how and when an election by a charity under subsection (6) is to be filed.

Subsection 225.1(8) Revocation

Subsection 225.1(8) allows a charity to revoke an election made under subsection (6) which it may wish to do should the nature of the charity's activities change such that it no longer makes zero-rated supplies or it makes a greater percentage of exempt supplies. However, a charity cannot revoke an election if it has been in effect for less than one year.

Subsection 225.1(9) Restriction on Input Tax Credits

New subsection 225.1(9) provides that, where a charity was restricted from claiming an input tax credit or a deduction under subsection 232(3) or 234(2) while following the simplified method of determining net tax under subsection 225.1(2), the charity cannot subsequently claim the credit or deduction after it elects out of the method.

Subsection 225.1(10) Streamlined Input Tax Credits

Subsection 225.1(10) allows a charity that meets the test of being a prescribed person for purposes of subsection 259(12) to use the streamlined input tax credit (ITC) calculation, regardless of which method of determining net tax it is following.

A prescribed charity is one whose total taxable supplies did not exceed $500,000 in either its preceding fiscal year or in its preceding quarter (if the election to use the streamlined ITC method becomes effective after the first quarter in its current year). Furthermore, except for charities that had made this election effective for fiscal years beginning before July 1993, there is also a purchase threshold test they must meet. The charity's total purchases of taxable property and services (not including zero-rated or exempt purchases) in the preceding fiscal year must not have exceeded $2 million and it must be reasonable to expect that such purchases in the current year will not exceed $2 million.

Where an eligible charity chooses to use the streamlined ITC method, any input tax credit in respect of personal property or services that the charity is entitled to claim may be determined by applying a factor of 7/107 to the cost of the property or service, including provincial sales taxes, gratuities, late-payment penalties and duties.

New section 225.1 applies in determining the net tax of a charity for reporting periods of the charity beginning after 1996.

Clause 46

Election for Streamlined Accounting

ETA
227

Section 227 allows eligible registrants to elect to use a streamlined accounting method to determine net tax for a reporting period.

Subclause 46(1)

Election for Streamlined Accounting – Charities

ETA
227(1)

The amendment to subsection 227(1) precludes charities from making an election to use a streamlined accounting method set out in the *Streamlined Accounting (GST) Regulations* since a new simplified method of determining net tax for charities is provided in new section 225.1 (see commentary on clause 45). Any election under section 227 previously made by a charity ceases to have effect immediately before its first reporting period beginning after 1996. At that time, the charity will automatically switch to the new simplified method unless it qualifies to elect out of using that method and does so. Even then, it will not be permitted to use any other streamlined accounting method except the streamlined input tax credit calculation if it is eligible.

The amendment applies for purposes of determining the net tax of a charity for reporting periods beginning after 1996.

Subclause 46(2)

Application

ETA
227(6)

Existing section 227 is amended to add subsection 227(6), which provides that, for purposes of determining net tax by the methods set out in the *Streamlined Accounting (GST) Regulations*, sections 231 to 236 do not apply except as otherwise provided in those Regulations.

These sections contain rules for adding or deducting various amounts in determining net tax. This amendment is made for clarification purposes only and applies as of January 1, 1991, the implementation date of the streamlined accounting methods.

Clause 47

Calculation, Remittance and Refund of Tax

ETA
228

Section 228 deals with the requirement to calculate net tax in a return. In addition, this section deals with remittances and refunds of net tax.

Subclause 47(1)

Tax on Purchase of Real Property

ETA
228(4)

Subsection 228(4) deals with tax payable on the purchase of real property from a person who, under subsection 221(2), is not required to collect tax on the sale. Under the existing legislation, the purchaser is required to remit any tax payable on the purchase directly to the Receiver General and to file with the Minister of National Revenue a special return to account for the tax.

As of January 1, 1997, registrants purchasing property under these circumstances will not have to file a special return provided the property has been purchased for use or supply primarily in the course of the registrant's commercial activities. In these cases, tax will be reported in the registrant's regular return for the reporting period in which the tax became payable. The registrant will pay that tax not later than the filing-due date of that return. In any other case – i.e., where the purchaser is not a registrant or where the property is not acquired for supply or use primarily in commercial activities of the purchaser – the requirement that a special return be filed will remain, and the tax will have to be paid by the end of the month following the calendar month in which it becomes payable.

Further minor wording changes are made, effective on April 23, 1996, to specify the circumstances in which subsection 228(4) applies, thus obviating the need for the cross-reference to subsection 221(2) and the exclusion for deemed supplies. This change is made for clarification purposes only.

Subclause 47(2)

Set-Offs

ETA
228(6) and (7)

Subsection 228(6) provides for a mechanism to allow a person to offset any tax remittable by any net tax refund or rebate claimed by that person in another return. This prevents the situation where a person claiming a refund or rebate on one return or application is nonetheless required to remit tax reported on another return and wait until the first return or application has been processed before receiving the refund or credit. Subsection 228(7) provides authority for the tax payable or remittable at any time by a person to be offset by the amount of any refund or rebate to which a closely related person is entitled. The amendments to subsections 228(6) and (7) extend the application of the offset provisions to tax payable under Division IV of Part IX of the Act.

The wording of these subsections has also been amended to reflect the changes to section 219 and subsection 228(4), which remove, for most registrants, the requirement that special returns be filed to report the tax remittable under subsection 228(4) or Division IV (see also commentary on clause 43).

The amendments to subsections 228(6) and (7) are effective on April 23, 1996.

Clause 48

Overpayment

ETA
230

Section 230 requires the Minister of National Revenue to pay a refund to a person of any amount paid on account of the person's net tax for a reporting period that exceeds the actual net tax remittable for the period.

Subsection 230(1) Refund of Overpayment

Existing subsection 230(1) requires the Minister to refund an overpayment for a reporting period with all due dispatch after the return for the period is filed. Amended subsection 230(1) clarifies that such an overpayment may arise from instalment payments or from other payments made on account of net tax. The amended provision also confirms that the refund must be claimed in a return for the reporting period.

Subsection 230(2) Restriction

Subsection 230(2) prohibits the Minister from refunding an overpayment to a person unless the person is up to date in filing GST returns. The change to subsection 230(2) is consequential to the changes to subsection 230(1) and reflects the revised wording of that subsection.

Subsection 230(3) Interest on Refund

Existing subsection 230(3) requires the Minister to pay interest on a refund from 21 days after the later of the day the person filed the return in which the refund was claimed and the day the person files all outstanding GST returns. The change to subsection 230(3) is consequential to the changes to subsection 230(1) and reflects the revised wording of that subsection.

These amendments take effect on April 23, 1996 and apply to all payments made by the Minister on or after that day.

Clause 49

Special GST Credit for Certified Institutions

ETA
230.2(2)(*d*)

Existing section 230.2 provides a special GST credit to registered charities and not-for-profit organizations that were certified under the former federal sales tax system pursuant to Part XIV of Schedule III to the Act. Under the GST, certified institutions collect tax on their taxable supplies and are entitled to input tax credits in respect of their purchases. In determining the amount of tax remittable to the government, however, section 230.2 allows certified institutions to deduct a portion of the tax collectible during certain periods on their sales of manufactured goods. The section provides for a gradual decrease in the deductible portion over the period 1991 to 1994.

Amended paragraph 230.2(2)(*d*) extends the special GST credit for one additional year, until December 31, 1995. The amendment allows registered certified institutions to continue to claim a special credit equal to 25 per cent of the GST that became collectible or was collected by them in 1995 on specified sales.

The amendment was announced in the Department of Finance Press Release of December 9, 1994 and is effective on January 1, 1995.

Clause 50

Bad Debts

ETA
231

Subsection 231(1) Bad Debts

Currently, where an account receivable becomes a bad debt, the vendor may claim bad-debt relief if the bad debt is written off in the businesses' books. Subsection 231(1) provides that the vendor may claim a deduction equal to the tax fraction of the bad debt written off.

To clarify the amount that the vendor may claim, a formula is added to subsection 231(1). Specifically, the deduction is equal to the tax payable in respect of the supply multiplied by the ratio of the total amount of the bad debt written off, including GST and applicable provincial taxes, to the total amount payable for the supply including GST and applicable provincial taxes.

The new formula applies for the purpose of determining the net tax for any reporting period for which a return is filed after April 23, 1996.

Subsection 231(2) Closely Related Groups

Under the existing legislation, a deduction for bad debts written off in respect of a taxable supply is available to the person who made the supply or to a listed financial institution that is a member of a closely related group of which the supplier is a member and that purchased the receivable at face value on a non-recourse basis. Amended subsection 231(2) extends this rule to include persons that are not "listed financial institutions" but are financial institutions because of paragraph 149(1)(*b*) or new paragraph 149(1)(*c*).

This amendment applies to accounts receivable written off after April 23, 1996.

Subsection 231(3) Recovery of Bad Debt

Under the existing legislation, where a person has claimed an input tax credit in respect of a bad debt, and the debt is subsequently recovered, subsection 231(3) requires that an amount equal to the tax fraction of the amount recovered be added to the person's net tax.

To clarify the amount that is recoverable, a formula is added to the subsection. Specifically, the amount required to be added is equal to the bad debt recovered by the person in respect of a supply multiplied by the ratio of the tax payable in respect of the supply to the total amount paid or payable on the supply, including GST and applicable provincial taxes.

This amendment applies for the purpose of determining the net tax for any reporting period for which a return is filed after April 23, 1996.

Subsection 231(4) Limitation

Existing section 231 permits a person to claim the bad debt deduction in determining the person's net tax for any reporting period that ends within four years after the end of the reporting period in which the bad debt was written off. New subsection 231(4) reduces the limitation period for claiming the deduction from four years to two years. Under the new limitation period, the deduction must be claimed in a return filed within two years after the due date of the return for the reporting period in which the bad debt was written off.

This amendment applies after June 1996. However, the four-year limitation period will continue to apply to amounts written off as bad debts before July 1996.

Clause 51

Tax Adjustments

ETA
232

Section 232 sets out rules relating to refunds and adjustments of tax.

Subsection 232(1) Refund or Adjustment of Tax

Existing subsection 232(1) authorizes a supplier who has erroneously collected an amount as tax from a customer to refund it to the customer or provide the customer with a credit. Where the erroneous amount has been charged but not collected, the supplier may adjust the amount of tax charged. Under the existing rules, the refund, credit or adjustment may be made up to four years after the end of the reporting period in which the supplier charged or collected the amount in error. Amended subsection 232(1) reduces the limitation period for making the refund, credit or adjustment to two years from the day the amount was charged or collected.

This amendment applies to amounts charged or collected as tax after June 1996. This amendment also applies to amounts charged or collected as tax before July 1996 unless the amounts are adjusted, refunded or credited on or before June 30, 1998.

Subsection 232(2) Adjustment

Existing subsection 232(2) authorizes a supplier to adjust tax charged on a supply to reflect a reduction in price. Where the tax has not been collected, the registrant may adjust the amount of tax charged. Where the tax has been collected, the registrant is allowed to refund or credit the excess tax to the recipient. The registrant is given up to four years after the end of the reporting period in which the consideration was reduced to adjust the tax. Amended subsection 232(2) requires the adjustment to be made within two years from the day the consideration for the supply is reduced.

This amendment applies to reductions in consideration made after June 1996. The four-year limitation period will continue to apply to reductions in consideration made before July 1996.

Clause 52

Deduction for Rebate

ETA
234(1)

The amendment adding the reference to subsection 252.41(2) in subsection 234(1) is consequential to the introduction of new section 252.41 (see commentary on clause 61). That section provides for a rebate to a non-resident person in respect of installation services acquired in Canada in certain circumstances. Under amended subsection 234(1), a registered supplier of an installation service who has paid or credited an amount on account of a rebate to a non-resident person in accordance with subsection 252.41(2) may deduct the amount in determining the installer's net tax.

This measure applies after April 23, 1996.

Clause 53

Food, Beverages and Entertainment

ETA
236(2)

Section 236 provides for a recapture of 50 per cent of the total of all input tax credits that a registrant is entitled to claim in a fiscal year in respect of meals and entertainment. This ensures that the GST treatment of meals and entertainment expenses is consistent with the income tax rules, which allow a registrant to deduct only 50 per cent of an amount paid or payable in respect of entertainment services, food or beverages, in determining income.

Subsection 236(2) provides that this rule does not apply to charities, which are defined in existing subsection 123(1) as entities that are registered charities for purposes of the *Income Tax Act*. The subsection is amended as a consequence of the amendment to the definition "charity" in subsection 123(1) (see commentary on the definition "charity" under clause 1). Persons that meet the new definition of "public institution" in subsection 123(1), such as school authorities, hospital authorities, universities and public colleges that are registered charities for income tax purposes, will not be considered "charities" for GST purposes. Accordingly, subsection 236(2) is amended to refer to public institutions so that they will continue to be excluded from the rules in section 236.

This amendment applies to supplies of food, beverages or entertainment that a registrant receives, and allowances paid by a registrant, after 1996.

Clause 54

Voluntary Registration

ETA
240

Section 240 sets out the registration requirements for purposes of the tax.

Subclause 54(1)

Registration Permitted

ETA
240(3)

Subsection 240(3) permits persons engaged in a commercial activity in Canada and certain other specified persons to apply to become registered for purposes of the GST. It enables a non-resident person who, in the ordinary course of business, solicits orders for the delivery of goods in Canada to apply for registration even though those activities may not constitute the carrying on of a business in Canada.

The amendment extends voluntary registration to non-residents who supply goods for export to, or delivery in, Canada. It also allows voluntary registration to non-residents who supply services to be performed in Canada. Further, it permits non-residents to register where they supply intangible personal property that is to be used in

Canada, or that relates either to real or tangible personal property ordinary situated in Canada or to services to be performed in Canada.

This amendment applies after April 23, 1996.

Subclause 54(2)

Security

ETA
240(6) and (7)

Subsection 240(6) provides that, in the case of an application for registration by a non-resident person who carries on a commercial activity in Canada but does not have a "permanent establishment" in Canada, security has to be posted and maintained by the applicant in an amount and form satisfactory to the Minister that the person will collect and remit tax as required under Division V of Part IX.

The term "permanent establishment" in respect of a particular person is defined in subsection 123(1) as including not only a fixed place of business of the particular person, but also a fixed place of another person who acts in Canada on behalf of the particular person. Therefore, the particular person may be exempted from the application of subsection 240(6) even though the person does not have a fixed place of business in Canada.

This amendment extends the security requirements to all non-residents who are registered or are required to be registered and who do not make supplies through their own fixed place of business in Canada.

Subsection 240(6) is also amended to provide the Minister of National Revenue with the authority to require an amount of security from a person to cover all amounts payable or remittable by the person under Part IX.

New subsection 240(7) provides the Minister of National Revenue with the authority to retain, out of any GST refund or rebate to which a person is otherwise entitled, any amount of security that the person fails to give or maintain as required under subsection 240(6).

These amendments are effective on Royal Assent.

Clause 55

Reporting Period of Non-Registrant

ETA
245

Section 245 sets out the general rules for determining a registrant's reporting period for which GST returns are required to be filed.

Subclause 55(1)

ETA
245(1)

Existing subsection 245(1) provides that the reporting period of a person who is not a registrant is a calendar month. The only exception is for listed financial institutions, whose reporting periods are fiscal years. To provide uniform treatment for all non-registrants, this exception is eliminated.

This amendment applies to fiscal years of a listed financial institution beginning after April 23, 1996.

Subclauses 55(2) and (3)

ETA
245(2)(*a*)(ii)

Subsection 245(2) establishes the reporting periods for which GST returns are required to be filed by registrants.

The reporting periods that are deemed, under subsection 251(1), to be separate reporting periods upon becoming a registrant are ignored for the purposes of the rules in section 245. The amendment to the preamble to subsection 245(2) and to subparagraph 245(2)(*a*)(ii) clarifies that periods that are deemed to be separate periods by virtue of any of sections 265 to 267 dealing with trusts, bankruptcies and receiverships are also ignored.

These amendments apply after 1992.

Subclauses 55(4) to (8)

ETA
245(2)(*a*)(iii) and (*b*) to (*d*)

The amendment adding subparagraph 245(2)(*a*)(iii) ensures that charities (as newly defined in subsection 123(1)) are annual filers for GST purposes unless they elect to file quarterly or monthly. This change applies to fiscal years beginning after 1996.

New subparagraph 245(2)(*a*)(iv) replaces existing paragraph 245(2)(*c*), which is repealed. Paragraphs 245(2)(*b*) and (*d*) are amended as a consequence.

The amendment to subparagraph 245(2)(*b*)(i) ensures that a charity's reporting period will no longer depend on the amount of taxable supplies made by it in the preceding year.

These changes apply to fiscal years beginning after 1996.

Clause 56

Election for Fiscal Quarters

ETA
247

Section 247 entitles any person whose revenue in a fiscal year from taxable supplies does not exceed $6 million to elect to have fiscal quarters as reporting periods for purposes of filing GST returns in the following fiscal year. The amendments to section 247 ensure that charities (as newly defined in subsection 123(1)) are entitled to elect to file quarterly and to maintain that filing period, regardless of the value of their yearly taxable supplies.

These amendments apply to fiscal years of charities beginning after 1996.

The section is also amended, as of April 23, 1996, to clarify that persons who become registrants in a fiscal year can make the election, if they satisfy the threshold test, as of the day they become a registrant. Note that subsection 251(1) treats that day as the first day of the person's first reporting period.

Clause 57

Election for Fiscal Years

ETA
248

Under existing section 248, a person may elect to file GST returns annually, generally where the total consideration becoming due for taxable supplies made by the person does not exceed $500,000 during the preceding year. The amendments to section 248 ensure that charities (as newly defined in subsection 123(1)) are entitled to elect, as of the first day of a fiscal year, to file annually, and to maintain that filing period, regardless of the value of their taxable supplies during the preceding year. This change applies to fiscal years beginning after 1996.

Subsection 248(1) is also amended to clarify that the election under that subsection is available only if the person is a registrant. This amendment applies to fiscal years beginning after March 31, 1994, the date as of which the subsection was last amended.

Clause 58

Non-Resident Rebate in Respect of Exported Goods

ETA
252(1)(*a*)

Paragraph 252(1)(*a*) excludes purchases of used specified tangible personal property from eligibility for non-resident rebates under section 252. This paragraph is repealed as a consequence of the elimination of special rules for used specified tangible personal property in section 176 (see commentary on clause 25). As a result, a non-resident person will be able to claim a rebate for tax on purchases made in Canada of specified tangible personal property that is exported or taken by the person out of Canada within 60 days of the day it is delivered to that person.

This amendment applies to property acquired after April 23, 1996.

Clause 59

Rebate of Tax on Accommodation Supplied to Non-Residents

ETA
252.1

Existing section 252.1 provides a rebate of tax paid on short-term accommodation that is made available to non-resident consumers. The amendments to the section extend the rebate to non-resident businesses.

Subclause 59(1)

Definitions

ETA
252.1

Subsection 252.1(1) is amended by deleting the definition "short-term accommodation". That definition is amended and moved to subsection 123(1) (see commentary on the amended definition under clause 1).

This amendment is effective January 1, 1991.

Subclause 59(2)

Accommodation Rebate to Non-Resident Persons

ETA
252.1(2)

Existing subsection 252.1(2) provides for rebates to non-resident consumers for tax paid on short-term accommodation. Under the existing legislation, a business cannot claim the rebate for employees travelling on business.

The amendment to paragraph 252.1(2)(*b*) removes the restriction that the accommodation be acquired otherwise than for use in the course of a business. Therefore the rebate is available where accommodation is made available to a non-resident proprietor or an employee travelling on business.

The amendment to paragraph 252.1(2)(*c*) replaces the word "consumer" with the word "individual" to ensure that the rebate is available where the accommodation is made available to a proprietor acquiring it in the course of his or her business. However, as under the existing provision, no rebate is available where the accommodation is acquired for supply in the ordinary course of a business (e.g., by a tour operator selling tour packages in Canada). The marginal note for subsection 252.1(2) has been modified to reflect the intent of the amended subsection.

This amendment applies to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Subclause 59(3)

Rebate for Unregistered Non-Resident Tour Operators

ETA
252.1(3)(*d*)

Subsection 252.1(3) entitles an unregistered non-resident tour operator to a rebate in respect of short-term accommodation that the operator acquires and resells to non-resident persons at a place outside of Canada at which the tour operator or the operator's agent is conducting business. The existing subsection provides that a rebate may be claimed by an unregistered tour operator only to the extent that the accommodation is ultimately made available to a non-resident consumer. The amendment to paragraph 252.1(3)(*d*) ensures that the tour operator may claim the rebate to the extent the accommodation is made available to a non-resident individual, including, for example, where a non-resident business acquires accommodation to be made available to a non-resident employee.

This amendment applies to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Subclauses 59(4) and (5)

Calculation of Rebate for Accommodation Only

ETA
252.1(4)

This subsection provides a simplified method that non-resident consumers eligible for a rebate under subsection 252.1(2) in respect of short-term accommodation that is not part of a tour package may use to calculate that rebate. They can claim $5 per night instead of claiming the actual tax paid in respect of the short-term accommodation. The amendment ensures that this method of calculating the rebate is not available to businesses that acquire the accommodation for employees travelling on business. The rebate claimed in respect of such accommodation is to be calculated by the business based on the actual tax paid on the supply of the short-term accommodation.

The reference in subsection 252.1(4) of the French version of the Act to a consumer to whom the accommodation is made available is replaced by a reference to an individual. This addresses situations where the accommodation is not acquired by the individual but by an organization, such as a club, for the benefit of the individual but otherwise than for use in a business of the organization.

These amendments apply to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Subclauses 59(6) and (7)

Tax in Respect of Tour Package

ETA
252.1(5) of the French Version

Paragraphs 252.1(5)(*a*) and (*b*) of the French version of the Act refer to accommodation made available to a consumer. The reference to consumer is replaced by a reference to an individual to reflect the change allowing a rebate to be paid to a non-resident person that is not an individual and that acquires accommodation for use by a non-resident individual.

This amendment applies to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Subclause 59(8)

Calculation of Accommodation Rebate in Respect of a Tour Package

ETA
252.1(5)(*b*)

Subsection 252.1(5) sets out the rules for calculating a rebate in respect of short-term accommodation included in a tour package. The amendment to the description of C in the formula set out in paragraph 252.1(5)(*b*) replaces references to "consumer" with references to "individual" since amended subsection 252.1(2) extends the rebate to cases where accommodation is made available to a non-resident individual travelling on business.

This amendment applies to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Subclause 59(9)

Multiple Supplies of Accommodation for the Same Night

ETA
252.1(6) and (7)

Existing subsections 252.1(6) and (7) provide that a person may not claim a rebate calculated on the basis of $5 per night for more than one supply of short-term accommodation from the same supplier for any given night. The amendments to subsection (6) clarify that this provision is applicable only in respect of accommodation acquired by a consumer.

The amendments to subsection (7) provide that the limitation on the use of the $5 per night formula in relation to accommodation included in a tour package does not apply to businesses, which can claim more than one rebate on that basis for accommodation acquired from the same supplier for the same night.

This amendment applies to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Subclauses 59(10) and (11)

Deduction for Rebate Credited by a Registrant

ETA
252.1(8)(*a*) and 252.1(8)(*d*)(ii)(A) of the French Version

Section 252.1 provides that a supplier of short-term accommodation may claim a deduction from net tax equal to a rebate otherwise payable under subsection 252.1(2) or (3) to a customer. This, in many cases, relieves non-resident tour operators and individuals of having to file applications in order to obtain the benefit of the rebates.

The amendment to paragraph 252.1(8)(*a*) ensures that the deduction may be claimed where the non-resident recipient is not a consumer, in accordance with the extension of the rebate to businesses. Accordingly, subclause 59(11) amends the French version of the provision to replace a reference to a consumer by a reference to an individual.

These amendments apply to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Clause 60

Non-Resident Rebate for Short-Term Accommodation

ETA
252.2

Section 252.2 sets out restrictions on the claiming of rebates under section 252 or subsection 252.1(2) or (3).

Subclause 60(1)

General Restrictions on Rebate Claims

ETA
252.2(*d*.1) and (*e*)

Section 252.2 imposes certain restrictions on rebates claimed by non-resident persons for tax paid on exported goods and on certain short-term accommodation acquired by them while visiting Canada.

This amendment increases, from $7 to $14, the minimum total amount that may be claimed in an application. It also adds a new requirement that each receipt filed in support of the application include GST totalling at least $3.50.

These changes apply to rebate applications received by the Minister of National Revenue after June 1996.

Subclause 60(2)

Rebates for Short-Term Accommodation

ETA
252.2(*g*)

Existing paragraph 252.2(*g*) limits a rebate of tax paid on short-term accommodation included in a tour package to $75 where the application for the rebate is based on the $5-per-night formula. The paragraph is amended to provide that, for rebates claimed by businesses, the $75 limit applies to each individual for whom the claim is made.

This amendment applies to rebate applications received by the Minister of National Revenue after April 23, 1996.

Clause 61

Non-Resident Rebate Respecting Installation Services

ETA
252.41

New section 252.41 provides for a rebate to be paid in certain specified circumstances to a non-resident person who is not registered for GST purposes. The rebate is in respect of tax paid by the non-resident on the service of installing in Canada tangible personal property.

To qualify for the rebate, subsection 252.41(1) requires that tangible personal property be supplied on an installed basis by an unregistered non-resident person to a registered person. Also, the non-resident person who supplies the property or another unregistered non-resident person must be the recipient of a taxable supply in Canada of installing the tangible personal property in real property located in Canada for the use of the registered recipient of the tangible personal property.

For example, if a registered person purchased a generator from a non-resident supplier who was responsible for the installation of the generator in real property in Canada but who entered into an agreement with another registered person to perform the installation, the non-resident would be eligible for a rebate of GST paid on the installation service. The rebate is also available where the unregistered non-resident supplier of the tangible personal property acquires the installation service from an unregistered non-resident who in turn hires a registered installer to perform the installation service in Canada. In these circumstances, the non-resident recipient of the taxable installation service would be eligible for the rebate provided the other requirements of the provision are met.

Paragraph 252.41(1)(*a*) requires that the application for the rebate by the unregistered non-resident recipient of the installation service be filed within one year after the completion of the service.

Paragraph 252.41(1)(*b*) is relevant for purposes of the self-assessment rules relating to "imported taxable supplies" in Division IV of Part IX of the Act. The paragraph deems the registered recipient of the tangible personal property supplied on an installed basis to have received from the unregistered non-resident supplier of the property a separate supply of the installation service. Also, the installation service is deemed not to be incidental to the supply of the property. Further, the supply of the installation service is deemed to be for consideration equal to that part of the total consideration paid or payable by the registered recipient for the property and its installation that can reasonably be attributed to the installation. This ensures that the registered recipient of the tangible personal property is required to self-assess the GST under subsection 218(1) on that portion of the consideration paid to the unregistered non-resident supplier that can be reasonably attributed to the installation service where the property is for use otherwise than exclusively in a commercial activity.

Subsection 252.41(2) provides that the unregistered non-resident recipient of the installation service may submit an application for a rebate to the registered installer, rather than to the Minister of National Revenue. In these circumstances, the installer may pay to or credit in favour of the non-resident the amount of the GST rebate. A consequential amendment to subsection 234(1) permits the installer to deduct the amount of GST paid or credited to the non-resident in determining the net tax of the installer for the reporting period in which the amount is paid or credited. The installer is required to submit the rebate application form to the Minister of National

Revenue with the return filed for the reporting period in which the rebate was paid or credited to the non-resident.

Subsection 252.41(3) provides that, where an installer pays or credits the rebate to the non-resident recipient of the service and the installer knew or ought to have known that the non-resident was not entitled to the amount paid or credited as a rebate, the installer and the non-resident are jointly and severally liable to repay, to the Minister of National Revenue, the amount paid or credited in error to the non-resident.

The rebate is available for any supply of installation services made after April 23, 1996.

Clause 62

Employees and Partners

ETA
253(1)

Section 253 provides a rebate to certain employees and members of partnerships for the tax on expenses that are deductible in computing, for income tax purposes, the employee's income from employment, or the partner's income.

Paragraph 253(1)(*a*) is amended to ensure that, in the case of a member of a partnership, the rebate provision applies notwithstanding new subsection 272.1(1), which otherwise deems an acquisition or importation by the member for consumption, use or supply in the course of the partnership's activities to be made by the partnership and not by the member (see commentary on clause 76).

New paragraph 253(1)(*a*.1) is added to ensure that the expenses eligible for a rebate under section 253 are those that have not been incurred on the account of the partnership. Where the acquisition is made on the account of the partnership, the partnership may still be eligible to claim an input tax credit.

Existing paragraph 253(1)(*b*) refers to tax payable in respect of an acquisition or importation. Amended paragraph 253(1)(*b*) provides that the tax payable must have been paid before there is an entitlement to the rebate.

The formula in existing subsection 253(1) for calculating the rebate is amended to ensure that reimbursements that an employee or partner received or is entitled to receive from the employer or partnership are subtracted from the amount deducted under the *Income Tax Act* in computing the employee's or partner's income. This amendment addresses situations where the *Income Tax Act* does not already require a given expense deduction to be calculated net of reimbursements.

These amendments apply as of January 1, 1991 but do not apply for the purpose of determining any rebate for which an application was received at a Revenue Canada office before April 23, 1996.

Clause 63

New Housing Rebate

ETA
254

This section provides for a partial rebate of the GST paid by an individual who purchases a newly-constructed house, condominium unit or single-unit residential complex for use as a primary place of residence for the individual, a related individual or a former spouse.

Subsection 254(3) Application for Rebate

Existing subsection 254(3) allows an individual up to four years to claim the new housing rebate from the time the individual acquires ownership of the newly-constructed residential complex. Amended subsection 254(3) reduces the limitation period for claiming the rebate from four years to two years.

Subsection 254(4) Application to Builder

The vendor, at the time of the sale, may credit the amount of the new housing rebate against tax owing by the purchaser. Under existing paragraph 254(4)(*c*), if the purchaser was not credited the rebate at the time of purchase, he or she still has up to four years after taking ownership of the residential complex to claim the rebate by filing an application with the vendor. Amended paragraph 254(4)(*c*) reduces the limitation period for making application to the vendor from four years to two years.

These amendments apply to any rebate in respect of a residential complex where ownership of the complex is transferred to the applicant after June 1996. The four-year limitation period will continue to apply where ownership is transferred to the rebate applicant before July 1996.

Clause 64

New Housing Rebate for Building Only

ETA
254.1

Section 254.1 provides for a rebate to the purchaser of a new house who leases from the builder, on a long-term basis, the land on which the house is built.

Subclause 64(1)

Definition "long-term lease"

ETA
254.1(1)

The expression "long-term lease" is defined for purposes of section 254.1 which provides for a rebate to a purchaser of a new house on land leased from the builder under a long-term lease. One of the circumstances in which a lease qualifies as a "long-term lease" is where it has a term of at least twenty years. The amendment to the definition "long-term lease" clarifies that the test is based on the period of continuous possession provided under the lease.

This clarification is consistent with similar wording changes made to the definitions "residential trailer park" and "residential complex" in subsection 123(1) as well as to sections 6, 7 and 8.1 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule.

For consistency, these wording changes all apply on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any amount claimed in a return under Division V, or in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

Subclause 64(2)

Single Unit Residential Complexes and Condominium Units

ETA
254.1(2)

The amendment to paragraph 254.1(2)(*a*) extends the application of the rebate in respect of new housing built on leased land to sales of residential condominium units built on leased land.

This amendment applies to any rebate for which an application is filed with the Minister of National Revenue on or after April 23, 1996.

Subclause 64(3)

Exception

ETA
254.1(2.1)

New subsection 254.1(2.1) provides that a rebate under section 254.1 in respect of a residential complex is not available where the builder was deemed to have made a taxable supply of the complex under subsection 191(1) but is exempt under another Act or law from the payment of tax in respect of the deemed supply.

This amendment is effective January 1, 1991 but does not apply to a rebate for which an application was received at a Revenue Canada office before April 23, 1996.

Subclauses 64(4) and (5)

Applications

ETA
254.1(3) and (4)

Existing subsection 254.1(3) allows a purchaser of a residential complex up to four years from the time the purchaser takes possession of the complex to claim the rebate under section 254.1. Amended subsection 254.1(3) reduces the limitation period for claiming the rebate from four years to two years.

Existing paragraph 254.1(4)(*b*) provides that if the amount of the rebate is not credited or paid by the builder to the purchaser, the purchaser has four years from the time possession is transferred to make an application to the builder for the rebate. Amended paragraph 254.1(4)(*b*) reduces the limitation period for making application to the builder from four years to two years.

These amendments apply to any rebate in respect of a residential complex where possession of the complex is transferred to the applicant after June 1996. The four-year limitation period will continue to apply where possession is transferred to the rebate applicant on or before the last day of that month.

Clause 65

Co-operative Housing Rebate

ETA
255

Section 255 provides a partial rebate of GST, comparable to that under section 254, where an individual purchases a share in a co-operative housing corporation for the purpose of using a new residential unit of the corporation as a primary place of residence for the individual, a related individual or a former spouse.

Existing subsection 255(3) provides that an individual has up to four years after the day the ownership of the share is transferred to claim the rebate. New subsection 255(3) reduces the limitation period for making application from four years to two years.

This amendment applies to a rebate in respect of a share of the capital stock of a cooperative housing corporation ownership of which is transferred to the applicant after June 1996. The four-year limitation period will continue to apply where ownership of the share is transferred to the rebate applicant before July 1996.

Clause 66

Rebate for Owner-Built Homes

ETA
256

Section 256 provides a partial rebate of the GST paid by an individual who builds or substantially renovates his or her own primary place of residence or hires another person to do so.

The amendment to paragraph 256(2)(*a*) extends the application of the rebate in respect of owner-built homes to residential condominium units.

New subsection 256(2.01) denies a rebate under section 256 in respect of any improvement to a residential complex that is under construction or substantial renovation if the tax on the improvement becomes payable more than two years after the day the complex is first occupied after the construction or substantial renovation is begun.

Existing subsection 256(3) provides that a rebate under section 256 in respect of a residential complex shall not be paid unless an application is filed within two years after the earlier of the following two dates:

- the day the complex is first occupied after its construction or substantial renovation is begun or the day ownership is transferred to another person without the complex having been occupied, as the case may require; and

- the day construction or substantial renovation of the complex is substantially completed.

Under this rule, if a complex that is being renovated is occupied before the work is substantially completed, the owner has only two years to apply for the rebate after taking occupation, even if it takes longer to complete the work. Any construction or renovation costs incurred after that two-year period would not qualify for the rebate.

Under the amended rule, in the case of a complex that is occupied while it is being constructed or renovated, the owner may apply for the rebate up to two years after the construction or renovation is substantially completed, provided that the complex is substantially completed within two years of the date of occupation. If the owner takes longer to complete the work, the time limit for filing the application is nevertheless four years from the date of occupation.

These changes apply to any rebate in respect of a residential complex for which an application is filed on or after April 23, 1996 except where:

- the complex was occupied as a place of residence or lodging between the time its construction or substantial renovation began and April 23, 1996,

- the construction or substantial renovation of the complex was substantially completed before April 23, 1996, or

- the complex was sold by the applicant, and ownership was transferred to the purchaser before April 23, 1996.

Clause 67

Rebate to Owner of Land Leased for Residential Purposes

ETA
256.1

This section provides a rebate of tax to a lessor of certain residential land where the tax was paid by the lessor in purchasing or improving the land. Generally, the rebate is available where the land has been leased under exempt conditions to a person who will be required to self-assess tax on the use of the land for residential purposes.

Existing subsection 256.1(2) provides that an application for the rebate must be filed before the day that is four years from the time the lessee self-supplies under section 190 or 191. New subsection 256.1(2) reduces the limitation period for filing the application from four years to two years. Under the new limitation period, the application must be filed on or before the day that is two years after the self-supply occurs.

This amendment applies to any rebate in respect of land that is deemed to have been self-supplied after June 1996. The four-year limitation period will continue to apply where the self-supply occurs before July 1996.

Clause 68

Non-Registrant Sale of Real Property

ETA
257

Section 257 provides a rebate to a non-registrant who makes or is deemed to make a taxable supply of real property by way of sale. The rebate is based on the tax the non-registrant paid on the purchase of the property and that was not recovered by the non-registrant by way of an input tax credit or rebate.

Subsection 257(2) Application for Rebate

Existing subsection 257(2) provides that the application for rebate under this section must be made within four years after the day consideration for the sale was paid or became due to the non-registrant. Amended subsection 257(2) reduces the limitation period from four years to two years.

This amendment applies to any rebate in respect of a supply of real property for which all of the consideration becomes due, or is paid without having become due, after June 1996. Where all or part of the consideration becomes due or is paid before July 1996, the four-year limitation period will continue to apply.

Subsection 257(3) Redemption of Real Property

New subsection 257(3) addresses situations where the non-registrant's property has been seized or repossessed by a creditor but the non-registrant has a statutory right or a right under an agreement relating to a debt security to redeem the property. In this case, the non-registrant is not entitled to claim the rebate under section 257 unless and until the time limit for redeeming the property has expired without the non-registrant exercising the right. A related amendment is made to section 183 (see commentary on subclause 33(8)).

Under new paragraph 257(3)(*d*), the non-registrant is treated as having become entitled to claim the rebate on the day the time limit for redemption expired. Therefore, the limitation period for claiming the rebate begins on that day.

Amendments similar to those explained above are also made to section 193 (see commentary on clause 39).

This amendment is effective on April 24, 1996.

Clause 69

Public Service Body Rebate

Section 259 of the Act entitles qualifying public service bodies to a rebate of the tax paid by them on inputs for which they are not entitled to claim an input tax credit.

Subclause 69(1)

Definition "claim period"

ETA
259(1)

The definition "claim period" in subsection 259(1) is used to identify the period in respect of which a rebate under section 259 can be claimed. It has the effect of limiting the number of rebate applications that can be made in a year. Under the existing legislation, non-registrants can claim a rebate in respect of each of their fiscal quarters. This amendment reduces the number of claims they can file each year to two. Their first and last two fiscal quarters will be their two claim periods.

This amendment applies to claim periods in fiscal years beginning after 1996.

Subclause 69(2)

Definition "non-creditable tax charged"

ETA
259(1)

The term "non-creditable tax charged" is defined in subsection 259(1) and refers to amounts that the rebate applicant is or was required to pay as tax (net of input tax credits) and that are therefore potentially rebatable.

Existing subparagraph (*a*)(ii) of the definition includes amounts that an applicant that is a registrant is deemed to have collected when, as a creditor, the registrant seizes property from a debtor and takes that property to the registrant's own use. The registrant is ordinarily then required to remit that tax. However, under the streamlined accounting method for charities set out in new section 225.1 (see the commentary on clause 45), charities following that method are not required to include tax deemed to have been collected in these cases in their net tax remittances. The reference to such tax is therefore removed from subparagraph (*a*)(ii) of the definition "non-creditable tax charged" and new subparagraph (*a*)(ii.1) of the definition adds the tax only where it is deemed to have been collected by a person other than a charity that determines its net tax under the new simplified method.

This amendment applies to tax deemed to have been collected by charities during reporting periods beginning after 1996.

Subclause 69(3)

Exclusion from "non-creditable tax charged"

ETA
259(1)

This amendment clarifies that amounts a person has received or is entitled to receive as a refund, rebate or remission under any other provision are excluded from "non-creditable tax charged".

This amendment applies for the purposes of determining rebates for claim periods beginning after 1996.

Subclause 69(4)

Definition "selected public service body"

ETA
259(1)

The definition "selected public service body" in subsection 259(1) is amended by adding the criterion, in relation to public colleges, that they be established and operated otherwise than for profit in order to be eligible for a rebate under the section. This is consistent with the criterion that currently applies to school authorities and universities.

This amendment applies for the purpose of determining rebates under section 259 in respect of non-creditable tax charged for claim periods beginning after April 23, 1996.

Subclause 69(5)

Rebate for Persons Other Than Designated Municipalities

ETA
259(3)

This subsection provides authority for the Minister of National Revenue to pay rebates to charities, qualifying non-profit organizations and selected public service bodies other than persons designated as municipalities under section 259. A similar rebate is available for the latter group under subsection 259(4).

This subsection is amended to provide that the calculation of the rebate is subject to the rules set out in new subsection 259(4.1) (see commentary on subclause 69(7)).

This amendment applies to rebates for which applications are received at a Revenue Canada office after April 23, 1996.

Subclause 69(6)

Rebate for Designated Municipalities

ETA
259(4)

This subsection provides authority for the Minister of National Revenue to pay rebates to organizations that are designated as municipalities in respect of certain activities for purposes of section 259.

This subsection is amended to provide that the calculation of the rebate is subject to the rules set out in new subsection 259(4.1) (see commentary on subclause 69(7)).

This amendment applies to rebates for which applications are received at a Revenue Canada office after April 23, 1996.

Subclause 69(7)

Apportionment of Rebates

ETA
259(4.1)

New subsection 259(4.1) is added to provide specific rebate apportionment rules for selected public service bodies that act in different capacities. These bodies include a hospital authority, school authority, university, public college or person determined under subsection 123(1), or designated under section 259, to be a municipality. Subsection 259(4.1) applies to any selected public service body that engages in activities as a charity, public institution (see commentary on the definition "public institution" under clause 1) or qualifying non-profit organization that are separate from other activities undertaken in its capacity as a selected public service body.

New subsection 259(4.1) requires these organizations to apportion inputs related to their exempt activities for purposes of determining the amount of their rebate. They are entitled to recover at least 50 per cent of the tax paid on these inputs. However, to the extent that inputs are for consumption, use or supply in operating their respective facilities – for example, a hospital in the case of a hospital authority or a school in the case of a school authority – or, in the case of a municipality, fulfilling its responsibility as a local authority, they are entitled to apply the higher rebate rate applicable to the selected public service body category in which they fall. For example, if a religious order, as a charity, operated a hospital and undertook other activities that were unrelated to operating the hospital, the order would be entitled to an 83-per-cent rebate for inputs into exempt activities relating to the operation of the hospital and a 50-per-cent rebate in relation to other exempt activities.

Where an organization falls into more than one category of selected public service body and also engages in unrelated charitable or non-profit activities, it is also required to apportion rebates. For example, if a charity runs a hospital and a public college in addition to having other activities unrelated to the operation of either facility, it is required to apportion its rebate for exempt activities as follows: 83 per cent for its inputs relating to the operation of the hospital, 67 per cent for its inputs relating to the operation of the public college, and 50 per cent for all other exempt activities.

Where an organization acts in the capacity of more than one type of selected public service body (e.g., it operates a hospital and a university) but has no other activities, it must follow the apportionment rules set out in existing subsections 259(7) and (8). It need not concern itself with the rules in new subsection 259(4.1) as well.

For persons designated to be municipalities only for the purposes of section 259, these amendments apply as of January 1, 1991. In all other cases, these amendments apply to rebates for which applications are received at a Revenue Canada office after April 23, 1996.

Subclause 69(8)

Election for Streamlined Accounting

ETA
259(12)

Existing subsections 259(12) to (15) set out rules relating to an election by a public service body that meets certain prescribed size criteria to determine its rebate under section 259 in a simplified manner. Under this method, it is not necessary to separate out the GST, provincial sales tax and gratuities paid in respect of a purchase in order to calculate the rebate.

The amendments remove the requirement for a formal election. Any public service body that qualifies as a prescribed person may determine its rebate in the simplified manner.

These amendments apply for the purpose of determining rebates for claim periods beginning after April 23, 1996.

Clause 69.1

Rebate for Printed Books

ETA
259.1

New section 259.1 of the Act provides for a 100-per-cent rebate of the GST that becomes payable after October 23, 1996 by specified persons upon their acquisition or importation of printed books, audio recordings of printed books and printed versions of religious scriptures.

Definitions

ETA
259.1(1)

New subsection 259.1(1) defines certain expressions used in new section 259.1.

"claim period"

This expression refers to the period for which an application for a rebate under section 259.1 may be made. The definition "claim period" currently used for the purpose of claiming rebates under section 259 will also be used for the purposes of new section 259.1. Thus, where the applicant is registered for GST purposes, the claim period is the registrant's reporting period. For non-registrants, their claim periods are their first and last two fiscal quarters of their fiscal year.

"printed book"

The expression "printed book" will take on its ordinary meaning, subject to specific exclusions. For greater certainty, the expression is defined to exclude newspapers, as well as magazines and periodicals that either are not purchased by subscription by the rebate applicant or that have more than 5 per cent of their printed space devoted to advertising. Also excluded are books designed primarily for writing or drawing on or affixing thereto items, such as clippings, pictures, coins, stamps or stickers. Agendas, calendars, directories and rate books (e.g., insurance rate books) are excluded. It should be noted that an item (sometimes referred to as a "multi-media item") that consists of a book and another medium (e.g., a record, cassette or disc) that are packaged and sold together for an all-inclusive price is not generally considered a book.

"qualifying non-profit organization"

The definition "qualifying non-profit organization" that is currently used for the purposes of section 259 will also be used for the purposes of section 259.1. That term refers to non-profit organizations that receive government funding equal to at least 40 per cent of their gross annual revenue, as determined by rules set out in regulations made for the purposes of section 259.

"specified person"

The definition "specified person" is relevant in determining which persons are eligible for the rebate under new section 259.1. "Specified persons" are defined to be municipalities, universities, public colleges (within the meaning of subsection 123(1) as amended by subclause 1(7)) and school authorities, as well as charities and qualifying non-profit organizations that operate a public lending library. In addition, authority is provided to prescribe a charity or qualifying non-profit organization whose primary purpose is the promotion of literacy to be a specified person for the purposes of the section.

Rebate

ETA
259.1(2)

New subsection 259.1(2) provides authority for the Minister of National Revenue to pay to specified persons rebates equal to the GST payable in respect of their acquisitions or importations of printed books, audio recordings of such books and printed versions of religious scriptures, except where the specified persons have acquired or imported these items for the purpose of resale or to give away permanently.

Application for Rebate

ETA
259.1(3)

New subsection 259.1(3) provides that specified persons have up to four years after the end of their claim period in which the GST became payable to claim a rebate of that tax.

Limitation

ETA
259.1(4)

New subsection 259.1(4) provides that, except where a specified person is required to file separate applications for rebates under section 259 in respect of a branch or division, only one application for rebates under new section 259.1 can be made for a particular claim period of the person.

Application by Branches or Divisions

ETA
259.1(5)

New subsection 259.1(5) provides that, where a specified person's branches or divisions are required to file separate applications for rebates claimed under section 259, those branches or divisions are also required to file separate applications for rebates to which the specified person is entitled under section 259.1.

Clause 70

Charity Exports

ETA
260

Existing section 260 provides for a rebate to a charity for GST paid on goods or services for which it is not entitled to claim an input tax credit and that are exported by it for charitable purposes.

The amendment removes the reference to "charitable purposes" outside Canada. As a result, the rebate may be used by the charity to recover tax paid on all exported goods and services that it acquires and exports, including those bought and exported in the course of a commercial activity of the charity. The rebate mechanism is needed to relieve these exports of tax because, under the new streamlined method of accounting provided to charities under subsection 225.1, charities following that method will be entitled to input tax credits only in respect of capital personal property and real property (see commentary on clause 45).

This change applies to goods or services on which tax becomes payable or is paid without having become due after April 23, 1996.

Section 260 is also amended, as of January 1, 1997, as a consequence of the new definition of "charity" in subsection 123(1) (see commentary on clause 1). The amended definition excludes entities that are registered charities for the purposes of the *Income Tax Act* and are "public institutions" as newly defined in subsection 123(1) (see commentary on the definition "public institution" under clause 1). Specific references to those institutions are added to section 260 to ensure that the rebate continues to be available to them.

Clause 71

Rebate of Payment Made in Error

ETA
261

This section provides that where a person pays or remits an amount of tax, net tax, penalty or interest that is later found not to be payable or remittable, the person may claim a rebate of that amount.

Existing subsection 261(3) provides that an application for the rebate must be filed by the person within four years after the amount was paid or remitted. New subsection 261(3) reduces the limitation period from four years to two years.

This amendment applies to amounts paid or remitted after June 1996. This amendment also applies to amounts paid or remitted before July 1996 unless the amounts are claimed in an application filed on or before June 30, 1998.

Clause 72

Trustees in Bankruptcy

ETA
265(1)(*a*)

Section 265 sets out the rules that apply to trustees in bankruptcy and bankrupts. In essence, the trustee in bankruptcy is treated as an agent of the bankrupt. As such, acquisitions and supplies effected by the trustee but made in the course of a commercial activity of the bankrupt are treated as having been made by the bankrupt.

For greater certainty, paragraph 265(1)(*a*) is amended to expressly provide that, while acting in the capacity of the trustee in bankruptcy, a trustee is providing a service to the bankrupt and any amounts to which the trustee becomes entitled for doing so are consideration for the supply of the service.

This amendment applies as of January 1, 1991.

Clause 73

Estates and Trusts

ETA
267 to 269

Section 267 Estates

Existing section 267 sets out the rules dealing with the passing of property of a deceased individual to the executor of the individual's will or the administrator of the individual's estate.

Existing subsection 267(1) provides that the transfer of the property to the executor is treated for GST purposes as a supply for no consideration. The property is then treated as being used by the executor immediately after its transferral for the same purposes for which it was used by the deceased before death. In addition, the executor is treated as having paid any tax on the property that was paid by the deceased and as having claimed any input tax credits that were claimed by the deceased. This allows the claiming of an input tax credit in appropriate circumstances in respect of tax paid by the deceased when the property is subsequently sold or distributed by the estate.

The existing rules in subsection 267(1) are intended to place the estate of a deceased individual in the same position that the individual was in. However, these rules fall short in that they address only the treatment of property. New section 267 serves to broaden the rules by deeming all the provisions of Part IX of the Act – subject to sections 267.1, 269 and 270 – to apply to the estate of the individual as though the individual had not died. As a result, rules that apply to individuals, such as the exclusion from the definition "builder" in subsection 123(1) and the New Housing Rebate under section 254, would also apply to the individual's estate.

To clarify the personal representative's filing responsibilities, new paragraphs 267(*a*) and (*b*) provide rules for determining reporting periods on the death of an individual. The individual's reporting period ends on the day the individual dies, and the estate's first reporting period begins the next day and ends on the day the individual's reporting period would have ended had the individual not died.

Section 267.1 Trusts

New section 267.1 sets out rules to clarify the GST treatment of the on-going operations of both testamentary and *inter vivos* trusts.

Subsection 267.1(1) Definitions

Since the same rules are to apply to trusts and estates, to avoid repetition, a reference in new section 267.1, or any of sections 268 to 270, to a "trust" also includes a reference to an estate of a deceased individual. Similarly, a reference in these sections to a "trustee" includes a reference to the personal representative of a deceased individual. "Personal representative" is newly defined in subsection 123(1) (see commentary on the definition "personal representative" under clause 1).

Subsection 267.1(2) Trustee's Liability

Subsection 267.1(2) is added to clarify the obligations imposed on trustees including personal representatives of a deceased individual. Each trustee is liable to satisfy an obligation such as the requirement to file. However, the satisfaction of that obligation by one trustee removes the liability of the other trustees.

Subsection 267.1(3) Joint and Several Liability

Subsection 267.1(3) is added to clarify the extent of joint and several liability imposed on a trustee (or personal representative) with the trust (or estate). Such a liability exists for all amounts payable or remittable by the trust while the trustee acts as a trustee of the trust. The liability extends to periods before the trustee began acting as a trustee of the trust, but only to the extent of the property and money under the control of the trustee. Also, the joint liability is discharged to the extent of the amount that either the trust or trustee pays or remits in respect of the liability.

Subsection 267.1(4) Waiver

New subsection 267.1(4) provides the Minister of National Revenue with the authority to waive the requirement for a personal representative of a deceased individual to file a return for a reporting period of the individual ending on or before the day the individual died. This removes the burden on the representative to file a return where, for example, the representative has insufficient information with which to prepare a return.

Subsection 267.1(5) Activities of a Trustee

For greater certainty, new subsection 267.1(5) is added to explicitly provide that, when acting in the capacity as a trustee of a trust in the course of a business of doing so (i.e., the trustee is not an "officer" as newly defined in subsection 123(1)), the trustee supplies services to the trust, and any amounts to which the trustee is entitled for doing so are consideration for those supplies. In every other respect, however, anything done by a person in their capacity as a trustee of a trust is considered to have been done by the trust. This provision also applies to executors of estates. This rule is consistent with the existing inclusion of trusts and estates in the definition "person" in subsection 123(1).

Section 268 *Inter Vivos* Trusts

Existing section 268 provides that, where property is settled by a person on an *inter vivos* trust, the transfer is to be treated for GST purposes as a sale of the property by the person to the trust. Consideration for the sale is equal to the amount determined for income tax purposes to be the proceeds of disposition of the property.

There are no substantial changes to section 268. For legislative consistency, the expression "shall be" is changed to the term "is".

Section 269 Distribution by Trust

Existing section 269 provides that, subject to sections 265 (bankruptcy rules), 266 (receivership rules) and 267 (rules pertaining to the passing of property from a deceased individual to the personal representative of the deceased), where a trustee distributes property of the trust to a beneficiary of the trust, the trust is treated as having made a supply of the property. The consideration for the supply is deemed to be the amount determined for income tax purposes to be the proceeds of disposition of the property.

The references to sections 265 to 267 are unnecessary and they are therefore removed in amended section 269. Section 265 already provides that the estate of a bankrupt is deemed not to be a trust or estate while, in section 266, a receiver is deemed not to be a trustee. The reference to section 267 is unnecessary since sections 267 and 269 do not conflict.

The new definitions "trust" and "trustee" in new subsection 267.1(1) ensure that section 269 applies to all estates of deceased individuals, including estates in which the property is not held in trust.

Section 269 is also amended to apply to distributions of property to persons who are not beneficiaries of the trust. As a result, where a beneficiary assigns or otherwise transfers title in the beneficiary's interest in the trust or estate to another person, the distribution to that person is deemed to be a supply made by the trust to the person for consideration equal to the amount determined under the *Income Tax Act* to be the proceeds of disposition of the property.

These amendments apply as of January 1, 1991 except for the change to section 269 dealing with distributions to persons who are not beneficiaries of the trust, which applies to distributions made after April 23, 1996, and the amendments to paragraphs 267(*a*) and (*b*) relating to the reporting periods of estates, which apply only where the estate is created on the death of an individual after April 23, 1996.

Clause 74

Representatives

ETA
270(1)

Section 270 provides that a "representative" handling the estate or administering or winding-up a commercial activity or a business of a person must obtain a certificate from the Minister of National Revenue before distributing any property or money under the representative's control. "Representative" is defined in existing subsection 270(1) to include, among other persons, an executor, within the meaning assigned by subsection 267(2), of an individual who is a registrant.

Paragraph (*b*) of the definition "representative" in subsection 270(1) is amended to replace the reference to an "executor" by a reference to a trustee of a trust that is a registrant. This amendment is consequential to the repeal of the definition "executor" in section 267 and the addition of new subsection 267.1(1), which provides that a reference to a trustee includes a reference to a personal representative. "Personal representative", as newly defined in subsection 123(1) (see commentary on the definition of that expression under clause 1), has essentially the same meaning as "executor" in existing subsection 267(2).

This amendment takes effect on April 24, 1996. The references in existing section 270 to an "executor" are replaced by references to a "personal representative".

Clause 75

ETA
Heading for Subdivision b of Division VII

This heading is changed to remove the reference to "joint ventures" as a consequence of the addition of a new separate subdivision b.1 containing the rules for both partnerships and joint ventures.

This amendment applies as of April 24, 1996.

Clause 76

Partnerships

ETA
272.1

New section 272.1, which replaces existing section 145, provides a more detailed set of rules pertaining to the activities, liabilities, formation and dissolution of a partnership.

Subsection 272.1(1) Things Done by Members

Under existing subsection 145(1), where a person engages in an activity as a member of a partnership, that activity is treated as an activity of the partnership rather than of the member. As a consequence, partners are not required to register separately for GST purposes. New subsection 272.1(1), which replaces existing subsection 145(1), similarly provides a general rule that anything done by a partner in his or her capacity as a partner is deemed to have been done by the partnership and not by the partner.

This amendment applies as of April 24, 1996.

Subsection 272.1(2) Acquisitions by Member

New subsection 272.1(2) provides exceptions to the general rule in subsection 272.1(1) where a partner acquires or imports property or services for consumption, use or supply in the course of the partnership's activities but not on the account of the partnership.

New paragraph 272.1(2)(*a*) deems the partnership not to have acquired or imported the property or service except as otherwise provided under subsection 175(1), which applies where there is a reimbursement by the partnership to the partner (see commentary on clause 24). Nevertheless, the partner may still be eligible to claim an input tax credit as explained below.

Under existing subsection 145(2), where a corporation that is a member of a partnership and registered for GST purposes incurs expenses outside the partnership but that relate to a commercial activity of the partnership, the corporation is treated as being engaged in the commercial activity. This has the effect of enabling the corporate partner to claim an input tax credit for the expenses.

New paragraph 272.1(2)(*b*), which replaces existing subsection 145(2), extends the input tax credit eligibility to any partner other than an individual. As a result, a partner such as a corporation, trust or other partnership, whether or not it engages in an activity separate from the partnership, is able to register (provided the partnership carries on a commercial activity) and claim input tax credits on its own GST returns for the tax payable by it on its purchases relating to commercial activities of the partnership. The partner would also account for any changes in use of the property as required under subdivision d of Division II. Individuals who are partners will continue to be eligible to claim the employee-partner rebate under section 253 (see commentary on clause 62).

This change applies as of April 24, 1996 and also applies for the purpose of determining any input tax credit for a reporting period beginning before that day that is claimed in a return received at a Revenue Canada office on or after April 23, 1996.

New paragraph 272.1(2)(*c*) applies where a partner incurs an expense relating to the partnership but not on the account of the partnership, and the partner is reimbursed by the partnership in circumstances in which new subsection 175(2) applies. New paragraph 272.1(2)(*c*) provides that, in this case, any input tax credit that the partner claims in the partner's separate GST return must be reduced by the amount of the input tax credit that the partnership is entitled to claim in respect of the reimbursement. Pursuant to new subsection 175(2), the partnership is entitled to claim an input tax credit in respect of the expense only if the reimbursement is made before the partner files a return in which the partner claims an input tax credit for the expense (see commentary on clause 24).

Paragraph 272.1(2)(*c*) applies as of April 24, 1996. In addition, it applies to input tax credits for reporting periods that began before that day where they are claimed in returns received at a Revenue Canada office on or after April 23, 1996.

Subsection 272.1(3) Supply to Partnership

New subsection 272.1(3) is added to deem the amount of consideration for supplies made by a partner (or prospective partner) to a partnership otherwise than in the course of the partnership's activities. For example, this section would apply where a partner has a separate business and provides property or services from that business to the partnership.

Paragraph 272.1(3)(*a*) fixes the consideration for such a supply where the property or service is for use exclusively in commercial activities of the partnership. Any amount that is paid or credited to the partner is deemed to be consideration for the supply, whether it be cash or an increase in the supplying partner's interest in the partnership. The consideration is deemed to become due when the amount is so paid or credited.

Where the property or service is not for consumption, use or supply exclusively in the course of commercial activities of the partnership, paragraph 272.1(3)(*b*) provides that the consideration is deemed to be equal to the fair market value of the property or service that is so acquired by the partnership at the time the supply is made. The fair market value is determined as though the partner and partnership were dealing at arm's length and represents the value of the entire property or service, including the supplying partner's interest in it.

This provision applies to supplies made after April 23, 1996. Transitional rules are provided with respect to supplies made on or before that day. In this case, the existing rules apply for the purpose of determining whether there has been an underpayment of tax. However, the proposed rules will apply for the purpose of determining whether there has been an overpayment. If the tax charged or collected on a supply made on or before April 23, 1996 exceeds the amount payable under the existing rules and a rebate application under subsection 261(1) was received at a Revenue Canada office before that day, the amount of the rebate will be determined in accordance with the existing rules. However, if the application is received on or after that day, a rebate will be payable only to the extent that the amount charged or collected exceeds the amount payable under the new rules.

Subsection 272.1(4) Deemed Supply to Partner

Subsection 272.1(4) is added to clarify the GST treatment upon the disposal of property from a partnership to a person who ceases to be a member of the partnership or who, at the time the disposition was agreed to or arranged, was a partner or had agreed to become one. In these circumstances, the deemed appropriation rule in subsection 172(2) does not apply. Rather, the partnership is deemed to have made a supply of the property to the person for consideration equal to the fair market value of all of the partners' interests in the property at the time of the transfer.

This subsection applies to dispositions after April 23, 1996. Transitional rules are provided with respect to dispositions on or before that day. In this case, the existing rules apply for the purpose of determining whether there has been an underpayment of tax. However, the proposed rules will apply for the purpose of determining whether there has been an overpayment. If the tax charged or collected in respect of a disposition made on or before April 23, 1996 exceeds the amount payable under the existing rules and a rebate application under subsection 261(1) was received at a Revenue Canada office before that day, the amount of the rebate will be determined in accordance with the existing rules. However, if the application is received on or after that day, a rebate will be payable only to the extent that the amount charged or collected exceeds the amount payable under the new rules.

Subsection 272.1(5) Joint and Several Liability

Subsection 272.1(5) is added to specify the extent of joint and several liability imposed on a person who is a partner or former partner (other then a limited partner who is not a general partner). Such a liability exists for all amounts that become payable or remittable by the partnership before or during the period in which the person is a member of the partnership. Where the person was a member at the time of the dissolution of the partnership, the joint and several liability also extends to amounts that become payable or remittable after the dissolution. The liability of a person for amounts that became payable or remittable before the person became a partner is limited to the property and money of the partnership. Also, in all cases, the joint liability is discharged to the extent of the amount that any partner pays or remits in respect of the liability.

Such partners and former partners are also jointly and severally liable with the partnership for all other obligations for which the partnership is liable, such as filing returns.

This provision applies to amounts that become payable or remittable after April 23, 1996 and to all other amounts and obligations outstanding after that day.

Subsection 272.1(6) Continuation of Partnership

New subsection 272.1(6) is added to clarify the rules applicable to a partnership upon the addition or departure of a partner. For the purposes of the GST, the old partnership is deemed to continue to exist until its registration is cancelled.

This provision applies as of April 24, 1996.

Subsection 272.1(7) Continuation of Predecessor Partnership by New Partnership

New subsection 272.1(7) is added to establish rules applicable to partnership reorganizations such as the dissolution of a partnership into two separate partnerships. Unless the new partnership applies for a new registration, it is deemed to be a continuation of the predecessor where the majority of the members of the new partnership also formed a majority of the members of the predecessor and together had more than a 50-per-cent interest in the capital of the predecessor. Further, those members must have transferred to the new partnership all or substantially all of the property distributed to them in settlement of their capital interests in the predecessor.

This amendment applies as of April 24, 1996.

Clause 77

Electronic Filing and Execution of Documents

ETA
278.1 and 279

Section 278.1 Electronic Filing

New section 278.1 provides for the use of electronic media for filing GST returns.

Under subsection 278.1(2), the Minister of National Revenue has authority to specify the format, etc., in which information is to be transmitted using electronic media in order to be compatible with, and meet the requirements of, Revenue Canada's systems. This subsection requires a person who wishes to file electronically to apply to the Minister for that purpose. Subsection 278.1(3) provides that, where the Minister is satisfied that the applicant meets the criteria for electronic filing, authorization may be given to file GST returns by means of electronic media. Subsection 278.1(4) enables the Minister to revoke such an authorization at the applicant's request, where the applicant fails to comply with any condition of the authorization or with the provisions of Part IX generally, or where the authorization is no longer required. Finally, subsection 278.1(5) stipulates that a return filed electronically is considered to have been received by the Minister in prescribed form only when the Minister acknowledges acceptance of it.

The new section applies after September 1994.

Section 279 Execution of Documents

Section 279 provides that any return, certificate or other document required to be provided under Part IX by a person other than an individual has to be signed by an individual duly authorized for that purpose. The amendment to this section, which is consequential to the introduction of electronic filing for GST returns, provides an exception to that requirement for returns that are filed electronically.

This amendment applies after September 1994.

Clause 78

Assessments

ETA
296

Section 296 authorizes the Minister of National Revenue to assess persons for their liabilities under Part IX of the Act. In assessing the net tax remittable by a person, the Minister may take into account various amounts that the person has failed to claim as an input tax credit, deduction, refund or rebate and may refund an overpayment or apply it against other liabilities under Part IX. In assessing tax payable by a person or an input tax credit claimed in error, the Minister may take into account any rebates of that tax that the person has failed to claim.

Paragraph 296(1)(*e*) Assessments

Existing subsection 296(1) provides the Minister of National Revenue with the authority to assess a person for net tax and other amounts payable or remittable under Part IX of the Act. The amendment to paragraph 296(1)(*e*) is consequential to the amendments to the partnership provisions of the Act under new section 272.1, which codify the joint and several liability of partners for partnership debts. The amendment is also consequential to the introduction of new subsection 177(1.1) whereby a person is jointly and severally liable if the person has elected with its agent to have the agent account for tax collectible (see commentary on clause 26). Amended paragraph 296(1)(*e*) also authorizes the Minister to assess members of a joint venture for their liabilities under the Act.

This amendment takes effect on Royal Assent except for the reference to subsection 177(1.1) which comes into effect on April 1, 1997.

Subsection 296(2) Allowance of Unclaimed Credit

Existing subsection 296(2) authorizes the Minister to take unclaimed input tax credits and deductions into account in assessing a person's net tax for a reporting period, where the assessment is made within the standard four-year assessment period. Under amended subsection 296(2), the Minister may continue to take an input tax credit for a reporting period (i.e., an input tax credit claimed to recover tax that became payable in the period) into account in determining the net tax for that period within the four-year period for assessing that period, even if the limitation period for claiming the credit has expired. However, an input tax credit for the period may not be allowed if the Act has been amended to disallow a claim for the credit for that period. The same rules apply to unclaimed deductions, although a deduction may be taken into account only if the limitation period for claiming it did not expire before the due date of the return for the reporting period.

Where the input tax credit or deduction results in an overpayment for the period, the overpayment may be applied against liabilities or refunded in accordance with amended subsection 296(3).

This amendment is effective on July 1, 1996.

Subsection 296(2.1) Allowance of Unclaimed Rebate

New subsection 296(2.1) authorizes the Minister to apply unclaimed rebates against any outstanding liabilities under Part IX of the Act. An unclaimed rebate may be applied under this subsection unless the limitation period for claiming it expired before the outstanding liability arose or an amendment to the Act would disallow a claim for that rebate. Unapplied rebates may be applied against other liabilities or refunded in accordance with amended subsection 296(3.1). New subsection 296(2.1) replaces the existing rebate offset provisions in existing subsections 296(4) and (4.1).

This amendment is effective on July 1, 1996.

Subsections 296(3) and (3.1) Application or Payment of Excess Credit or Rebate

Existing subsection 296(3) authorizes the Minister to apply an overpayment of net tax for a particular reporting period against any net tax liability for any other reporting period for which a return has been filed. Interest on the overpayment may also be applied. The interest accrues from 21 days after the later of the due date of the return for the particular period and the day the return for the particular period was filed, and accrues until the due date of the return for the other reporting period.

Amended subsection 296(3) also authorizes the Minister to apply an overpayment of net tax against net tax liabilities that arose before or after the reporting period to which the overpayment relates, whether the return for the other period has been filed or not. As well, the Minister may apply the overpayment against other types of GST liability, such as unpaid taxes, penalty and interest. New subsection 296(3.1) also authorizes the Minister to apply unapplied rebates against these past and future liabilities. In cases where an overpayment of net tax arose from an excessive payment made after the return for the reporting period was filed, interest accrues from the date the excessive payment was made.

Existing subsection 296(3) authorizes the Minister to refund an overpayment of net tax to the extent that it has not been applied against other liabilities, with interest to the day the refund is paid. New subsection 296(3.1) also authorizes the Minister to refund unapplied rebates with interest. In cases where an overpayment of net tax arose from an excessive payment made after the return was filed, interest will accrue from the date the excessive payment was made.

This amendment is effective on July 1, 1996.

Subsection 296(4) Limitation on Refunding Overpayments

New subsection 296(4) restricts the application or refund of overpayments under subsection 296(3). An overpayment of net tax for a person's reporting period can only be applied against liabilities that arose within the general four year period allowed for claiming input tax credits for that reporting period. Similarly, an overpayment of net tax for a reporting period may not be refunded unless the assessment for the reporting period is issued before the expiration of the two or four year period allowed to the person for claiming input tax credits for that reporting period and, consistent with existing sections 229 and 230, the person is up to date in filing returns.

This amendment is effective on July 1, 1996.

Subsection 296(4.1) Limitation on Refunding Allowable Rebates

Existing subsections 296(4) and (4.1) authorize the Minister to offset an unclaimed rebate of tax against an outstanding liability to pay that tax or a disallowed input tax credit that was claimed to recover that tax. These offsets are replaced by new subsection 296(2.1).

New subsection 296(4.1) restricts the application or refund of rebates under subsection 296(3.1). A rebate can only be applied against liabilities that existed at a time when the rebate could have been claimed in a rebate application. Similarly, a rebate may not be paid to the person being assessed unless the assessment is issued at a time when the rebate could have been claimed in a rebate application and, consistent with existing sections 229 and 230 of the Act, the person is up to date in filing returns.

This amendment is effective on July 1, 1996.

Subsection 296(5) Deemed Claim or Application

Existing subsection 296(5) provides that where an amount is taken into account, applied or refunded in the course of making an assessment, the person being assessed is deemed to have applied for the amount and the Minister is deemed to have refunded it. Where it is applied against a liability of the person being assessed, the person is deemed to have satisfied the liability to the extent of the amount applied. The amendments to subsection 296(5) are consequential to the amendments to subsections 296(2) to (4) and ensure consistency in the terminology used throughout the amended subsections.

This amendment is effective on July 1, 1996.

Clause 79

Period for Assessment

ETA
298

Section 298 sets out the limitation periods with respect to assessments under section 296.

Subclause 79(1)

ETA
298(1)(*b*)

The amendment to paragraph 298(1)(*b*) is consequential to the amendment to subsection 228(4), which allows a registrant purchasing real property from a person not required to collect tax to account for the tax payable on the purchase in the registrant's regular return for the reporting period in which the tax became payable.

This amendment takes effect on Royal Assent.

Subclause 79(2)

ETA
298(1)(*d*)

The amendment to paragraph 298(1)(*d*) is consequential to the amendment to section 219, which allows a registrant to account for the tax payable under Division IV in respect of imported taxable supplies in the registrant's regular return for the reporting period in which the tax became payable.

This amendment takes effect on Royal Assent.

Subclause 79(3)

ETA
298(1)(*f*)

The amendment to paragraph 296(1)(*f*) is consequential to the addition of new subsection 177(1.1) which provides that where an agent has jointly elected with a principal to include the tax collectible in respect of a supply made by the agent on behalf of the principal in the agent's determination of net tax and not the principal's, the agent and the principal are jointly and severally liable for the amount.

The amendment to paragraph 296(1)(*f*) is also consequential on the amendment to paragraph 296(1)(*e*) of the Act, which authorizes the Minister to assess members of a partnership or joint venture for their liabilities under the Act, and on new section 267.1 which clarifies the obligations imposed on trustees and personal representatives.

Under amended paragraph 296(1)(*f*), the Minister generally will not be permitted to assess a person more than four years after the person became liable to pay the assessed amount.

This amendment takes effect on Royal Assent. However, before April 1, 1997, paragraph 298(1)(*f*) is read without reference to subsection 177(1.1) which comes into effect on that day.

Clause 80

Binding Effect of Assessment

ETA
299(3.1)

New subsection 299(3.1) is added to establish the scope of the binding effect of an assessment by the Minister of National Revenue on an unincorporated body – i.e., a person other than an individual or corporation – such as a trust, unincorporated association or partnership.

Paragraph 299(3.1)(*a*) provides that the assessment is valid even where one or more of the persons liable for the obligations of the body do not receive a notice of the assessment.

Paragraph 299(3.1)(*b*) provides that the assessment of a body is binding on each member of the body that is liable for the body's obligations, subject to a reassessment of the body and the rights of the body to appeal.

Finally, paragraph 299(3.1)(*c*) provides that the assessment of a member in respect of the same matter as the assessment of the body is binding on the member subject only to a reassessment of the member and to the member's rights of objection and appeal on certain grounds. Those grounds are that the member is not a person who is liable to pay or remit an amount for which the body is assessed, the body has been reassessed, or the assessment of the body has been vacated.

New subsection 299(3.1) applies on Royal Assent.

Clause 81

Notice of Assessment

ETA
300

Section 300 requires the Minister of National Revenue to send a notice of assessment to anyone who has been assessed and sets out what may be included in a notice of assessment.

Existing subsection 300(2) provides that a notice of assessment may include assessments of more than one reporting period or transaction. Amended subsection 300(2) provides that a notice of assessment may cover assessments of any number or combination of reporting periods, rebates, transactions or other amounts payable or remittable under Part IX of the Act.

This amendment takes effect on Royal Assent.

Clause 82

Objection to Assessment

ETA
301

Section 301 deals with objections and appeals to assessments under Part IX of the Act.

Subclause 82(1)

Meaning of "specified person"

ETA
301(1)

Existing subsection 301(1) gives a person who is dissatisfied with an assessment the right to file a notice of objection with the Minister of National Revenue within 90 days from the day of mailing of the notice of assessment. That subsection is renumbered as subsection 301(1.1).

New subsection 301(1) defines the expression "specified person", which is relevant for the purposes of determining which persons are subject to the new rules set out in subsections 301(1.2) to (1.5) that require notices of objection to specify the issues in controversy and other information relevant in the resolution of the dispute.

"Specified person" means a listed financial institution described in any of subparagraphs 149(1)(*a*)(i) to (*x*) or a person whose threshold amounts as determined under subsection 249(1) exceed $6 million in each of their two preceding fiscal years. Registered charities (other than municipalities, hospital authorities, school authorities, public colleges and universities, who exceed the threshold) are excluded from the definition "specified person".

Specified persons will be subject to the new rules where they object to an assessment for which a notice of assessment is issued after April 1996.

Subclause 82(2)

ETA
301(1.2) to (1.6)

New subsection 301(1.2) requires each person who objects to an assessment to specify the issue in controversy in the notice of objection and to provide an estimate of the change in any amount relevant for the purposes of the assessment, such as an increase in allowable input tax credits, should the objection be successful. Facts and reasons in support of the person's position on each issue must also be provided.

New subsection 301(1.3) allows the Minister of National Revenue to request the taxpayer to provide the required information with respect to an issue where it was not provided in the notice of objection. If the taxpayer provides the information in writing within 60 days of the request, it will be treated as having been provided in the notice of objection.

New subsection 301(1.4) precludes appellants from raising new issues or revising the relief sought with respect to an issue in an objection to an assessment made under subsection 301(3), except where that assessment is made pursuant to a notice of objection to another assessment made under subsection 274(8). That subsection requires that the Minister of National Revenue consider, with all due dispatch, a request for reassessment submitted by a person who was party to a transaction to which the general anti-avoidance rule under subsection 274(2) applied where another person was reassessed in respect of the same transaction.

New subsection 301(1.5) provides that the limitation in subsection 301(1.4) does not apply to limit a person's right to object to a new issue raised for the first time by Revenue Canada in an assessment made under subsection 301(3).

These amendments apply to any assessment where the notice of assessment is issued after April 1996, except if it is issued pursuant to a notice of objection in respect of an earlier assessment made before May 1996. For notices of objection filed before 1997, the reference to "charity" in paragraph 301(1)(*b*) is replaced with a reference to "charity (other than a school authority, a public college, a university, a hospital authority or a local authority determined under paragraph (*b*) of the definition "municipality" in subsection 123(1) to be a municipality)".

New subsection 301(1.6) precludes any person from filing a notice of objection with respect to an issue for which the person has waived, in writing, the right to object.

This particular amendment applies after April 23, 1996 to waivers signed at any time.

Clause 83

Appeals

ETA
306.1

Section 306 provides that a person who has objected to an assessment may appeal to the Tax Court of Canada to have the assessment vacated or to have a reassessment made.

New subsection 306.1(1) precludes "specified persons" (within the meaning of new subsection 301(1)) from appealing an assessment to the Tax Court of Canada if the issue to be decided was not specified in the notice of objection to the assessment in the manner required by new subsection 301(1.2). They are also precluded from revising the relief sought with respect to an issue. These restrictions do not apply if the issue was a new issue raised for the first time by Revenue Canada in an assessment made under subsection 301(3).

This amendment applies to appeals instituted after the day on which the amendment receives Royal Assent where a notice of assessment is issued after April 1996, except where the assessment is issued pursuant to a notice of objection in respect of an earlier assessment made before May 1996.

New subsection 306.1(2) precludes any person from appealing an issue to the Tax Court of Canada on an issue in respect of which the person has waived, in writing, the right to object.

This amendment applies after the day on which it receives Royal Assent to waivers signed at any time.

Clause 84

Proof of Return

ETA
335(12.1)

New subsection 335(12.1) provides that a document presented by the Minister of National Revenue purporting to be a print-out of information received by the Minister under new section 278.1 by means of electronic media is, in the absence of evidence to the contrary, *prima facie* proof that the return was received (see commentary on clause 77).

This new section applies after September 1994.

Clause 84.1

Self-Supply of Residential Condominium Unit by Limited Partnership

ETA
336(5) and (6)

Section 336 sets out special rules pertaining to supplies of real property that straddle the start-up of the GST. In particular, the section provides that GST is not payable in respect of the purchase of a single unit residential complex, a residential condominium unit or a condominium complex (all as defined in section 123(1)) made under a written agreement entered into before October 14, 1989. In these cases, however, the builder is required to remit a special tax equal to 4 per cent of the selling price of the property.

New subsection 336(5) extends similar relief to the sale of interests in a limited partnership under a fixed-price offering memorandum issued before October 14, 1989, where the partnership is formed for the purpose of constructing and renting residential condominium units.

A typical example of this situation is where investors become limited partners for the purpose of developing and owning, through their partnership interest, a residential condominium rental complex. The limited partnership would enter into a number of fixed-price agreements including an agreement for the purchase of land and a separate agreement for the construction of the condominium. In this situation, where the interest in the limited partnership is sold under a fixed-price offering memorandum issued before October 14, 1989 and possession of a condominium unit is given to a person under a lease, licence or similar arrangement after 1990, the limited partnership, which is regarded as the builder of the complex, is subject to the self-supply rules under subsection 191(1).

Subsection 191(1) treats the limited partnership as having made a taxable supply of each unit as it is rented out. When this occurs, new subsection 336(5) requires the limited partnership to pay a special tax on the unit equal to 4 per cent of 80 per cent of the subscription price of the interest in the partnership that relates to the unit at the later of the time the construction or renovation is substantially completed and the time possession is given to another person under the rental agreement.

New subsection 336(6) sets out the definitions of "offering memorandum" and "subscription price" for purposes of subsection 336(5).

This amendment is effective as of January 1, 1991. However, it does not apply to residential condominium units owned by the partnership in a complex where possession of any unit was given to a residential tenant before December 1, 1996 under a lease, license or similar arrangement and the limited partnership self-assessed an amount of tax under subsection 191(1) which was included in a return received by Revenue Canada prior to December 1, 1996, if, as a result of the amendment, the taxpayer would be required to pay an additional amount of tax. Where the amount self-assessed exceeds the tax owing under the amendment, the limited partnership will be allowed to apply for a refund of the excess tax paid, except where it applies for a rebate for the tax under section 261 of the Act. These rebates must be claimed before the later of January 1, 1998 and the expiration of the normal limitation period for rebates of tax paid in error.

In addition, the limitation period for reassessments set out in section 298 is extended in circumstances covered by subsection 336(5). Where the Minister of National Revenue has already assessed a partnership for tax on residential condominium units affected by the amendment, the Minister may reassess the tax owing by the limited partnership in respect of these interests anytime before January 1, 1998 or the expiration of the normal limitation period for reassessments. This measure permits the Minister to reduce assessments to reflect the reductions in tax liability under the amendment.

Where a transitional FST rebate has been paid to a limited partnership in respect of a condominium complex and subsection 336(5) applies to interests in condominium units owned by the partnership in that complex, the Minister of National Revenue may reassess the rebate payable to the partnership notwithstanding the time limitations set forth in section 72 and section 81.11 of Part VII of the *Excise Tax Act*, provided that the reassessment or redetermination is made prior to 1998, or at the same time as an assessment of the partnership's GST liability is made. This will permit the Minister to reduce the amount of the FST rebate in circumstances where the rebate was calculated on the basis of the total value of the unit and a lower taxable value is established under new subsection 336(5).

Clause 85

Definition "improvement"

ETA
Schedule V, Part I, section 1

Existing section 1 of Part I of Schedule V defines the term "improvement" in relation to real property. The section is repealed because the definition "improvement" in subsection 123(1) of the Act, which currently relates only to capital property, is amended to apply to property generally (see commentary on the definition "improvement" under clause 1).

This amendment is effective on April 24, 1996.

Clause 86

Exempt Residential Leases or Licences

ETA
Schedule V, Part I, section 6

Section 6 of Part I of Schedule V exempts long-term residential leases and supplies of residential accommodation by way of lease or licence where the consideration does not exceed $20 per day. In order for a long-term lease of a residential complex or unit to be exempt, it must be occupied by the same individual for a period of at least one month. The amendment to paragraph 6(*a*) clarifies that the test is based on a period of continuous occupation.

This clarification is consistent with similar wording changes made to the definitions "residential complex" and "residential trailer park" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 7 and 8.1 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule.

For consistency, these wording changes are all effective on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any amount claimed as a deduction under subsection 232(3) in a return under Division V, or as a rebate in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

Clause 87

Lease of Real Property Where Exempt Re-Supply

ETA
Schedule V, Part I, paragraph 6.1(*b*)

Existing section 6.1 of Part I of Schedule V exempts leases of land or buildings to a person who, in turn, leases the property on an exempt basis. Subsection 148(1) of chapter 27, S.C. 1993 amended this section, effective January 1, 1993, to clarify the application of the section where the final lessee changes the use of the property during the lease interval. At the same time, the reference in paragraph (*b*) of the section to a building or part of a building consisting solely of residential units was replaced by a reference to "all or part of a building that forms part of a residential complex". This had the unintended effect of denying the exemption previously available for the lease of certain buildings, such as establishments used to provide short-term accommodation that is exempt under paragraph 6(*b*) of Part I of Schedule V (i.e., where consideration is $20 or less per day). Such a building, although consisting of residential units, is not a residential complex within the meaning of subsection 123(1) when it is being used as a hotel, motel or similar premises.

To correct this oversight, paragraph 6.1(*b*) is amended to continue to apply to the supply of a building or part of a building where the building or part, as the case may be, consists solely of residential units. As a result, the lease of such premises is exempt for any lease interval throughout which the re-supplies of residential units therein are exempt under paragraph 6(*b*).

This amendment is effective January 1, 1993, the effective date of the previous amendment to section 6.1.

Clause 88

Exempt Leases of Land or Trailer Park Sites

ETA
Schedule V, Part I, section 7

Section 7 of Part I of Schedule V exempts certain supplies by way of lease, licence or similar arrangement of land and residential trailer park sites for a period of least one month. The section is amended to clarify that the test is based on a period of continuous possession or use the land or site.

This clarification is consistent with similar wording changes made to the definitions "residential complex" and "residential trailer park" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 6 and 8.1 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule.

For consistency, these wording changes are all effective on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any amount claimed as a deduction under subsection 232(3) in a return under Division V, or as a rebate in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

Clause 89

Parking Spaces

ETA
Schedule V, Part I, section 8.1

Section 8.1 of Part I of Schedule V exempts certain supplies of residential parking for a period of at least one month. The section is amended to clarify that the test is based on the period "throughout" which the parking space is made available.

This clarification is consistent with similar wording changes made to the definitions "residential complex" and "residential trailer park" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 6 and 7 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule.

For consistency, these wording changes are all effective on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any amount claimed as a deduction under subsection 232(3) in a return under Division V, or as a rebate in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

Clause 90

Personal Trust

ETA
Schedule V, Part I, section 9

Existing section 9 of Part I of Schedule V exempts the sale of real property by an individual or a trust – all the beneficiaries of which are individuals and all the contingent beneficiaries of which are individuals or charities – with certain exceptions. Section 9 is amended as a consequence of the addition of the definition "personal trust" in subsection 123(1) (see commentary on clause 1). Amended section 9 applies to sales by individuals and personal trusts.

A substantive effect of this change relates to testamentary trusts. Under the new definition "personal trust", the restrictions regarding the beneficiaries of a trust, which are found in existing section 9, do not apply to testamentary trusts. This change is effective January 1, 1991 but does not apply to sales for which an amount was charged or collected on account of tax on or before April 23, 1996.

It should also be noted that the combined effect of these amendments and amendments to section 267 (see commentary on clause 73) is that sales of real property by a deceased individual's estate will be treated in the same manner under section 9 as if the sale had been made before the individual died. This change is also effective January 1, 1991 but does not apply to sales for which an amount was charged or collected on account of tax on or before April 23, 1996.

The use of the term "personal trust" in section 9 also affects the treatment of *inter vivos* trusts. A personal trust excludes such a trust where any beneficial interest in the trust is sold by the trust or by persons who contributed property to the trust. In this circumstance, the trust would not be able to avail itself of the exemption under section 9. This change applies to sales made after April 23, 1996. (See the coming-into-force provision for the definition "personal trust" in subsection 123(1) under subclause 1(15)).

Under existing section 9, the exemption is not available for capital real property used primarily in a business. Amended paragraph 9(2)(*a*) restricts the exception from exemption to cases where the business is carried on with a reasonable expectation of profit.

Finally, another exception is added to the exemption under section 9. The exception in new paragraph 9(2)(*c*) provides that the supply of a part of a parcel of land by a person who is an individual, a trust, or the settlor of a trust will not be exempt where the parcel was severed or subdivided by the person. New subsection 9(1) provides that, for the purposes of these rules, the settlor of a testamentary trust is the deceased individual upon whose death the trust was established.

There are two exceptions to this rule. Where the parcel of land was subdivided or severed into only two parts, and the person did not previously subdivide or sever it from another parcel of land, new paragraph (*c*) does not apply. This paragraph also does not apply in the case of a subdivision or severance where the recipient is related to or is a former spouse of the individual supplier or settlor, and the land is being acquired for the personal use and enjoyment of the recipient. Further, for purposes of determining whether land has been subdivided or severed, where the individual, trust or settlor supplies a part of a parcel of land to a person who has the right to acquire the land by expropriation, such as a municipality or utility commission, that part and the remainder of the parcel will not be considered to have been subdivided or severed from each other by the individual, trust or settlor.

New paragraph 9(2)(*c*) applies to supplies made after April 23, 1996.

Clause 91

Coin-Operated Washing Machines and Clothes-Dryers

ETA
Schedule V, Part I, section 13.3

New section 13.3 exempts the supply of a right to use a washing machine or clothes-dryer located in a common area of a residential complex.

It should be noted that the change-in-use rules under Subdivision d of Division II of Part IX apply where capital personal property, such as the coin-operated machines, used primarily in commercial activities begin to be used primarily in exempt activities as a result of the amendment. (Reference should also be made to section 198.1.)

This amendment applies to supplies made after April 23, 1996. As a result of the application of section 160, this means that the exemption applies in respect of consideration removed from the machines after that day.

New section 13.4 exempts a supply by way of lease, licence or similar arrangement of the common area of a residential complex that is for use as a laundry where the lessee is a person who supplies the use of the coin-operated washing machines and clothes dryers in the laundry on an exempt basis under new section 13.3.

The exemption for the lease of the laundry area applies to lease payments attributable to periods after April 23, 1996. To achieve this in the case of a lease that straddles that date, the provision of the property for the part of the lease period that ends before that date and the provision of the property for the remainder of the lease period are each treated as separate supplies. Notwithstanding this exemption, the lessor is entitled to claim input tax credits that would otherwise have been available if the supply had remained a taxable supply for inputs acquired or imported on or before December 15, 1996 for consumption or use in the course of leasing the area.

Clause 92

Definitions Relating to Health Services Exemptions

ETA
Schedule V, Part II, section 1

Subclause 92(1)

Definition "health care facility"

The definition "health care facility" in section 1 of Part II of Schedule V is amended to replace the expression "the mentally disordered" with the more generally accepted expression "individuals with a mental health disability".

The amendment applies on Royal Assent.

Subclause 92(2)

Definition "practitioner"

The definition "practitioner", in section 1 of Part II of Schedule V identifies the types of persons who are not required to charge tax on their supplies of services itemized in section 7 and new section 7.1 of this Part (see commentary on clauses 94 and 95).

The amendment adds dieticians to this list of practitioners. The amendment results from criteria established to determine which services supplied by health care practitioners will continue to be exempt under section 7 when rendered to an individual and whether there are additional services that would qualify. First, if the service is covered by a health insurance plan in a given province, it is exempt in that province. Second, if a service is covered by a plan in two or more provinces, it is intended that it be exempt in all provinces. Finally, if a service is not covered by a provincial health insurance plan, but is rendered in the practise of a profession that is regulated as a health care profession in five or more provinces, it is intended to be exempt in all provinces. Services that do not meet these criteria are intended to be taxable.

The amendment adding dieticians to the list of practitioners applies as of January 1, 1997.

Existing section 7 includes services that are currently exempt but do not meet the above criteria, namely osteopathic and speech therapy services. These services will remain on the list of exempt services until the end of 1997. If, at that time, they meet these criteria for exemption, an amendment will be introduced to allow these services to remain exempt.

Clause 93

Air Ambulance Services

ETA
Schedule V, Part II, section 4

Amended section 4 of Part II of Schedule V exempts ambulance services but excludes international air ambulance services, which are zero-rated under new section 15 of Part VII of Schedule VI (see commentary on clause 149).

It should be noted that if, as a result of the retroactive zero-rating of international air ambulance services, an ambulance operator would, as of a particular time, be considered to have been using capital property primarily in making taxable or zero-rated supplies, the operator may be entitled to claim input tax credits that were previously denied because of the existing exemption for all ambulance services.

The amendment is deemed to have come into force on January 1, 1991.

Clause 93.1

Nurses' Services

Schedule V, Part II, section 6

Section 6 of Part II of Schedule V is amended to add registered psychiatric nurses to the list of nursing professions whose services are exempt from tax. The designation "registered psychiatric nurse" is recognized under the legislation governing the nursing profession in several provinces. The section is also amended to add a reference to a "registered practical nurse" given that this is the term used in some provincial legislation in place of the term "registered nursing assistant", which is already referenced in the section.

The amendment to include "registered practical nurse" applies to supplies made after January 1, 1994, which is the day on which this designation came into effect in Ontario. The amendment to include "registered psychiatric nurse" applies to supplies made after 1996.

Clause 94

Exempt Health Care Services

ETA
Schedule V, Part II, section 7

Section 7 of Part II of Schedule V is amended to remove osteopathic and speech therapy services from the list of exempt health care services for supplies made after 1997. As noted in the commentary on the amendments to section 1 of this Part, these services do not meet the criteria for exemption described therein. If, at the end of 1997, these services do meet those criteria, an amendment will be introduced to allow them to continue to be exempt.

Clause 95

Dietetic Services

ETA
Schedule V, Part II, section 7.1

New section 7.1 of Part II of Schedule V adds dietetic services to the list of exempt health care services since these services satisfy the policy criteria enumerated above (see the commentary on clause 92 relating to the change to the definition "practitioner" in section 1 of this Part). The services are exempt when rendered to an individual (regardless of who the recipient of the supplies is) and when the recipient of the supply is a public sector body or operator of a health care facility within the meaning of section 1 of this Part.

It should be noted that the change-of-use rules under subdivision d of Division II may apply. For example, if capital personal property of a dietician that is used primarily in making taxable supplies begins to be used primarily in making exempt supplies as a result of the amendment, the change-of-use rules may apply. (Reference should also be made to section 198.1 of the Act.)

The amendment applies to supplies of dietetic services made after 1996.

Clause 96

Psychoanalytic Services

ETA
Schedule V, Part II, section 12

Existing section 12 exempts supplies of psychoanalytic services where the supplier has received the same training in the provision of such services as do medical doctors and is a member in good standing of a professional society that sets and maintains standards of practise for all members in respect of psychoanalytic services in Canada.

The commentary on the amendment to section 1 of this Part outlines the criteria established for determining which services provided by health care practitioners will be exempt of GST. Although the services of psychoanalysts do not currently meet those criteria, they will remain exempt until the end of 1997. If, at that time, the services of psychoanalysts meet the criteria, an amendment will be introduced to allow their services to remain exempt.

It should be noted that the change-of-use rules under section 199 will apply if the capital property of psychoanalysts that is used primarily in exempt activities begins to be used after 1997 primarily in making taxable supplies as a result of the amendment.

Clause 97

Definition "vocational school"

ETA
Schedule V, Part III, section 1

The definition "vocational school" in section 1 of Part III of Schedule V is relevant for purposes of the exemptions for educational services under sections 6 and 8 of this Part, and for purposes of paragraph 2(*l*) of Part VI of Schedule V. The definition is amended to remove the reference to institutions certified for the purposes of subsection 118.5(1) of the *Income Tax Act*. Accordingly, all institutions will have to satisfy the criterion of being established and operated *primarily* to provide courses that develop or enhance students' occupational skills in order to qualify as a vocational school under this Part. A number of organizations that were certified for the purposes of subsection 118.5(1) were not established primarily for that purpose. These organizations will no longer qualify as vocational schools for GST purposes.

It should be noted that the change-of-use rules under section 199 will apply if the capital property of an educational institution used primarily in exempt activities begins to be used primarily in making taxable supplies as a result of the amendment.

The amendment applies in relation to supplies made after 1996.

Clause 98

Supplies Through Vending Machines

ETA
Schedule V, Part III, section 3

Existing section 3 of Part III of Schedule V exempts supplies of food, beverages, services or admissions that are supplied by a school authority primarily to elementary or secondary school students as part of an extra-curricular activity organized by the school. This includes, for example, charges by a school to students for a school-organized visit to a museum or theatre. The exemption under this section does not extend to sales of goods other than food and beverages. For example, sales to students of school rings or sweaters by a school authority that is registered for GST purposes are subject to tax in the normal manner.

Amended section 3 provides that the exemption does not extend to food or beverages that are supplied through vending machines or that may be prescribed under section 12 of this Part.

The amendment applies to supplies made after April 23, 1996.

Clause 99

Exempt Courses

ETA
Schedule V, Part III, paragraph 8(*c*)

Section 8 of Part III of Schedule V provides an exemption for certain courses leading to certificates, diplomas or licences. One of the criteria for exemption in certain circumstances is that the supplier is a non-profit organization or a charity.

Paragraph 8(*c*) is amended as a consequence of the addition of new Part V.1 to the Schedule. The paragraph is amended to replace the reference to "charity" with a reference to "public institution", which is newly defined in subsection 123(1) (see commentary on the definition "public institution" under clause 1). Public institutions are defined as those universities, public colleges, school authorities, hospital authorities and local authorities designated as municipalities for all purposes of the GST that are registered charities within the meaning of the *Income Tax Act*.

These types of courses, when supplied by charities, will continue to be exempt under section 1 of new Part V.1 of Schedule V (see the commentary on clause 102.)

This amendment applies to supplies made after 1996.

Clause 100

Meal Plans

ETA
Schedule V, Part III, section 13

Amended section 13 of Part III of Schedule V clarifies the exemption for meal plans offered by universities and public colleges. Under this provision, a meal plan that is sold to students is exempt if the amount paid for the plan is sufficient to provide a student with at least 10 meals per week for the period of the plan, which must not be less than one month. The cost per meal must be based on the average cost of a meal at the educational institution. The amendment ensures that meal plans that are sold to students in the form of a decreasing balance debit card or meal vouchers are eligible for the exemption.

It should be noted that this exemption does not depend on whether the student purchasing the meal plan lives on- or off-campus. Hence, university students living off-campus and purchasing meal plans are provided the same treatment as students living in university or college residences. However, the meal plan must be for use by university or public college students at a campus cafeteria or restaurant. A qualifying meal plan would not cover purchases at an on-campus mini-mart or convenience store.

The amendment applies to plans for which all of the consideration becomes due or is paid without having become due after June 1996.

Clause 101

Child and Personal Care Services

ETA
Schedule V, Part IV, section 2

Section 2 of Part IV of Schedule V is amended to replace the expression "disabled individuals" with the more generally accepted expression "individuals with a disability".

The amendment is effective on Royal Assent.

Clause 102

Supplies by Charities

ETA
Schedule V, Part V.1

Existing Part VI of Schedule V to the Act sets out exempt supplies by public sector bodies including charities, non-profit organizations, municipalities, universities and public colleges, school authorities, hospital authorities and governments. For purposes of these rules, charities are defined as registered charities or registered Canadian amateur athletic associations within the meaning of the *Income Tax Act*.

Existing section 2 of Part VI exempts all supplies of personal property and services by charities except for certain exceptions set out therein. Charities are currently required to look to other provisions in Part VI of Schedule V, which apply to public sector bodies in general, to determine whether supplies excluded from section 2 are nevertheless exempt under another provision.

To simplify the rules for charities, a separate set of rules is set out for those public colleges, universities, school authorities, hospital authorities and local authorities designated as municipalities for all purposes of Part IX that are registered charities under the *Income Tax Act*. These organizations are newly defined as "public institutions" in subsection 123(1) and are excluded from the definition "charity". In addition, existing Part VI of Schedule V is amended to no longer apply to "charities" as newly defined. Rather, new Part V.1 of Schedule V provides for a comprehensive list of exemptions applying only to charities. Each section of new Part V.1 is described below in further detail.

With certain exceptions noted below, the provisions of new Part V.1 apply to supplies for which consideration becomes due or is paid without having become due after 1996.

Section 1 General Exemption

As is the case with existing section 2 of Part VI of Schedule V, section 1 of new Part V.1 exempts all supplies made by a charity of personal property or services except those listed in the paragraphs under the section. Section 1 of new Part V.1 also exempts supplies of real property by a charity which are currently exempt under section 25 of Part VI of the Schedule. In addition, some changes are made to the list of exemptions. The following supplies by charities, which are currently on the list of taxable supplies, will become exempt:

- catering services (existing paragraph 2(*g*) of Part VI of Schedule V);

- leases or licenses of real property for less than a month, and any goods leased with that property (existing paragraphs 2(*f*) and 25(*f*) of Part VI of Schedule V); and

- parking (existing paragraph 25(*h*) of Part VI of Schedule V).

It should be noted that the above supplies will continue to be excluded from the general exemption when made by public institutions (see Part VI of Schedule V).

In addition, the "direct cost" exemptions set out in existing sections 6 to 8 of Part VI of Schedule V are, in the case of charities, replaced with the exemption under section 5.1 of new Part V.1. In addition, the overriding volunteer exemption under existing section 3 of Part VI of Schedule V is repealed, and a new fund-raising rule is added for charities. These exemptions are described below.

The following supplies are excluded from the general exemption for charities:

- a zero-rated supply. New paragraph 1(*a*) replicates existing paragraph 2(*a*) of Part VI of Schedule V.

- deemed supplies (i.e., any supply deemed under the legislation to have been made by the charity). New paragraph 1(*b*) parallels existing paragraph 2(*b*) of Part VI of Schedule V. However, this exclusion also ensures that, where a charity is deemed to have made a supply under section 187 (i.e., the taking of bets on games of chance), it will not be a taxable supply. This is not a new exemption as it is provided for in existing section 5.2 of Part VI of Schedule V.

- capital and non-capital personal property used in a commercial activity immediately prior to the supply. New paragraph 1(*c*) parallels existing paragraphs 2(*c*) and (*d*) of Part VI of Schedule V.

- new goods acquired, manufactured or produced for resale purposes, and services supplied in respect of such goods. Under the existing legislation, supplies by charities of new goods and services in respect thereof are generally taxable (paragraph 2(*e*) of Part VI of Schedule V) subject to the overriding exemptions including the nominal consideration exemption under section 6 of that Part. New paragraph 1(*d*) of Part V.1 preserves this treatment. The revised nominal consideration exemption is set out in new section 5.1.

- admissions to a place of amusement where the maximum admission price exceeds one dollar.

  That part of an admission charge that is not considered a charitable donation is generally subject to GST pursuant to existing paragraph 2(*m*) of Part VI of Schedule V where the admission is to a place of amusement or a fund-raising event. Nonetheless, this is currently subject to certain overriding exemptions under other provisions such as the volunteer exemption or the exemption for supplies of admissions made for one dollar or less.

  Similarly, paragraph 1(*e*) of new Part V.1 carves admissions exceeding one dollar out of the general exemption. However, admissions may be exempt under new section 2 or 3 of this Part in certain circumstances (see commentary on those sections below).

- services or memberships entitling a person to supervision or instruction in recreational or athletic activities except where:

  - they are provided primarily to children 14 years of age or less, and overnight supervision is not provided throughout a substantial portion of the program; or

  - they are intended to be provided primarily to underprivileged individuals or individuals with a disability.

  Paragraph 1(*f*) parallels the treatment provided under existing paragraph 2(*j*) and section 12 of Part VI of Schedule V. For example, recreational classes for adults and any overnight camps continue to be taxable while day camps for children continue to be exempt where supplied by a charity. However, the provision is simplified for charities by removing the criterion that the services be part of a program consisting of a series of classes or activities.

- memberships in charities that entitle members to otherwise taxable admissions for no extra charge or that provide significant discounts to members.

  Paragraph 1(*g*) of new Part V.I parallels the exclusion from exemption set out in existing paragraph 2(*h*) of Part VI of Schedule V, while retaining the existing exemption for certain memberships provided primarily to children, underprivileged individuals or individuals with a disability.

  For example, tax would apply to a supply by a charity of a membership in a recreational club that supplies otherwise taxable admissions to members for no extra charge or at a significant discount.

- the professional services of performing artists. These services are taxable when provided under a contract with another organization that is staging a professional performance, for example, where a symphony orchestra supplies its services to an opera company. In effect, this is a relieving provision as it allows the supplier to claim input tax credits in respect of the supply, recognizing that the purchaser (i.e., the opera company) can likewise claim input tax credits on its purchase. Paragraph 1(*h*) of new Part V.I parallels existing paragraph 2(*i*) of Part VI of Schedule V.

- sales of tickets or other rights to participate in a game of chance conducted by a prescribed lottery corporation.

  Paragraph 1(*i*) of new Part V.1 parallels the treatment of supplies of rights to participate in games of chance as provided under existing paragraph 2(*k*) and section 5.1 of Part VI of Schedule V.

- sales of residential complexes. Paragraph 1(*j*) of new Part V.1 continues to carve sales of residential complexes out of the general exemption for supplies by charities. Charities must continue to look to Part I of Schedule V to determine exemptions for sales of residential complexes.

- vacant land sold to an individual or a personal trust (i.e., land on which there is no structure that was used by the body in either taxable or exempt activities).

  Paragraph 1(*k*) of new Part V.1 maintains the taxable status of vacant land sold by a charity as provided under existing paragraph 25(*c*) of Part VI of Schedule V. However, the provision is amended to replace the description of trusts in that paragraph with a reference to "personal trust", which is newly defined in subsection 123(1) (see commentary on the definition of that term under clause 1).

  Personal trusts include the type of trust referred to in existing paragraph 25(*c*). The term is somewhat broader, however. Existing paragraph 25(*c*) applies to trusts whose beneficiaries are individuals or, in the case of contingent beneficiaries, charities. The amended provision retains that condition only for *inter vivos* trusts. It applies to all testamentary trusts regardless of who the beneficiaries are. Therefore, a sale of vacant land by a charity to a testamentary trust will not be exempt under this provision.

- real property for which the charity has claimed or is entitled to claim an input tax credit (i.e., where the property was used primarily in a commercial activity).

  Paragraph 1(*l*) of new Part V.1 maintains the taxable status of such supplies of real property by charities as provided under existing paragraph 25(*d*) of Part VI of Schedule V.

- a supply of real property for which the charity has filed an election under section 211 of the Act.

  Paragraph 1(*m*) of new Part V.1 maintains the exclusion from exemption for supplies of such real property by charities as provided under existing paragraph 25(*g*) of Part VI of Schedule V.

Section 2 Admissions

Existing section 164 provides that, where a charity makes a supply of an admission to a dinner, ball, concert or similar fund-raising event, no tax applies on the portion of the admission price that can be considered a gift or contribution. In these cases, the term "charity" refers to a registered charity or registered Canadian amateur athletic association within the meaning of the *Income Tax Act*.

Section 2 of new Part V.1 exempts the total admission charged by a charity in such cases. For example, where a person pays $100 for a fund-raising dinner sponsored by a charity and the charity is entitled to issue a $50 charitable donation receipt for income tax purposes in respect of the admission price, no part of the $100 admission will be subject to GST.

Similar exemptions are introduced for public institutions (as newly defined in subsection 123(1)) and registered political parties, including candidates and referendum committees (see commentary on clauses 105 and 113 respectively).

This amendment applies to supplies for which consideration becomes due, or is paid without having become due, after 1996. Nonetheless, the existing rules will apply to admissions to any event for which any admissions have been sold before 1997. This will ensure that the same treatment applies to all admissions to a particular event.

Section 3 Fund-Raising Activities

Given that the small supplier thresholds for charities are increased significantly under the amendments to sections 148 and 148.1 (see commentary on clauses 9 and 10), many more charities than currently is the case will not be required to be registered to collect GST. As a result, fewer fund-raising activities will fall within the scope of the tax.

Section 3 of new Part V.1 is provided for those charities that are large enough to remain registered for the tax. It exempts most supplies made by such charities in the course of fund-raising activities that are not otherwise exempt under section 2 of that Part. Such supplies are exempt under section 3 where they are not made on a regular or continuous basis throughout the year or a significant portion of the year and do not entitle recipients to receive property or services from the charity throughout the year or a significant portion of the year. Also, the existing exclusions from the volunteer exemption will apply to this new exemption provision.

This exemption is intended to parallel the approach toward exemptions for fund-raising activities that is taken by many provinces for purposes of their sales taxes. For instance, where a charity operates a retail business year round or supplies admissions to performances held throughout its theatre season from May to October, the supplies will be taxable. However, if, for example, a charity had two fund-raising drives per year during which it sold chocolate bars, the supplies would be exempt.

A similar exemption is introduced for public institutions (see commentary on clause 105).

Section 4 Meal Programs

Section 4 of new Part V.1 exempts the supply of prepared meals by charities under programs, such as Meals on Wheels, that are designed to provide seniors, persons with disabilities or underprivileged persons with prepared food in their homes. The provision also exempts the sale of prepared meals to the charity for the purpose of carrying out the program.

This provision parallels existing section 15 of Part VI of Schedule V, which continues to exempt similar supplies by other public sector bodies.

Section 5 Supplies for No Consideration

Existing section 10 of Part VI of Schedule V provides an overriding exemption for supplies of property or services ordinarily supplied free of charge by a public sector body, including a charity. Such supplies are not considered to be made in the course of a commercial activity.

Section 5 of new Part V.1 maintains this exemption for charities, with the exception that the supply of blood or blood derivatives will be zero-rated under Part I of Schedule VI, even where supplied free of charge.

This amendment is consistent with the amendment to section 10 of Part VI of Schedule V (see commentary on clause 109). That section is amended, as of January 1, 1991, for supplies by charities and other public sector bodies. After 1996, however, it will apply only to the other public sector bodies, and section 5 of new Part V.1 will apply to charities.

Section 5.1 Direct Cost Exemption For Charities

Existing section 6 of Part VI of Schedule V exempts certain supplies by public service bodies made for consideration that does not exceed the direct cost of the supplies. Under the existing legislation, "direct cost " is defined in section 1 of that Part. An amendment is made to revise the definition of direct cost and move this definition to subsection 123(1) so that it also applies to new Part V.1, which sets out the exemptions for supplies by "charities" as newly defined in subsection 123(1) (see commentary on that definition under clause 1). Accordingly, new section 5.1 will apply only to "charities".

New section 5.1 provides for an amended direct cost exemption which results in a supply by a charity being exempt where:

- the total charge by the charity for the supply is equal to or is less than the tax-included direct cost of the good or service (as newly defined in subsection 123(1)) and the charity does not charge the recipient an amount as tax; or

- the consideration for the supply (which does not include tax on the supply) is less than the tax-excluded direct cost of the good or service (i.e., where the charity sells the good or service for less consideration than the charity paid for it) and the charity charges the recipient an amount as tax.

Section 6 Admissions to Gambling Events

Section 6 of new Part V.I replicates the existing exemption for admissions to gambling events under section 5 of Part VI of Schedule V.

Clause 103

Definitions

ETA
Schedule V, Part VI, section 1

Section 1 of Part VI of Schedule V sets out definitions of terms used throughout the Part.

Subclause 103(1)

Definition "direct cost"

The definition "direct cost" in section 1 of Part VI of Schedule V is repealed and replaced by a new definition of the term in subsection 123(1) (see commentary on the definition of that term under clause 1). The new definition will therefore apply for purposes of amended section 6 of Part VI of Schedule V as well as section 5.1 of new Part V.1 of that Schedule (see commentary on clauses 108 and 102 respectively).

This amendment is effective on January 1, 1997.

Subclause 103(2)

Definition "transit authority"

The definition "transit authority" in section 1 of Part VI of Schedule V is amended to replace the expression "the mentally disordered" with the more generally accepted expression "individuals with a disability".

The amendment is effective on Royal Assent.

Subclause 103(3)

Definitions "public sector body", "public service body" and "registered party"

Definition "public sector body"

Section 1 of Part VI of Schedule V is amended by adding a definition of "public sector body" for purposes of Part VI. The new definition provides that, for purposes of Part VI only, the term "public sector body" will not include a reference to a charity as newly defined in subsection 123(1). The reason for this is that the exemptions for supplies by charities are set out separately in new Part V.1 of the Schedule (see commentary on clause 102). The expression "public sector body" will continue to refer to non-profit organizations, municipalities and governments. It will also include universities, public colleges, school authorities and hospital authorities – including those that are public institutions as newly defined in subsection 123(1). Charities will continue to be public sector bodies for purposes of the rest of Part IX of the Act.

This definition comes into force on January 1, 1997 and also applies in relation to supplies made before that day for which consideration becomes due, or is paid without having become due, on or after that day.

Definition "public service body"

Section 1 of Part VI of Schedule V is also amended by adding a definition of "public service body" for purposes of Part VI. For purposes of Part VI only, the expression "public service body" will not include a reference to a charity as newly defined in subsection 123(1). The reason for this is that the exemptions for supplies by charities are set out separately in new Part V.1 of the Schedule (see commentary on clause 102). The term "public service body" will continue to include non-profit organizations, municipalities, universities and public colleges, school authorities and hospital authorities – including those that are public institutions as newly defined in subsection 123(1). Charities will continue to be public service bodies for purposes of the rest of Part IX of the Act.

This definition comes into force on January 1, 1997 and also applies to supplies made before that day for which consideration becomes due, or is paid without having become due, on or after that day.

Definition "registered party"

Section 1 of Part VI of Schedule V is amended to add a definition of "registered party". This expression will have the same meaning in Part VI as under existing section 164. That section deals with fund-raising events and other activities in respect of which a registered party receives political contributions or donations. That section is repealed (see commentary on clause 16), and the new rules for the treatment of supplies in respect of which donations are given to political parties, including referendum committees and candidates, are found in new section 18.2 of Part VI of Schedule V (see commentary on clause 113.1).

This definition comes into force on April 23, 1996 but also applies in relation to supplies made before that day for which consideration becomes due, or is paid without having become due, on or after that day.

Clause 104

General Exemptions for Public Institutions

ETA
Schedule V, Part VI, section 2

Section 2 of Part VI of Schedule V is amended to replace references to "charity" with references to "pubic institution". This is consequential to the addition of new Part V.I of the Schedule, which sets out exemptions for supplies by charities separately from the exemptions under Part VI for "public institutions". The term "charity" is redefined in subsection 123(1) to exclude a "public institution", which is newly defined in that subsection to refer to a person that is a registered charity, within the meaning of the *Income Tax Act*, and that is a school authority, hospital authority, university, public college or person determined to be a municipality for purposes of Part IX.

These amendments apply to supplies for which consideration becomes due after 1996 or is paid after 1996 without having become due.

Clause 105

Overriding Volunteer Exemptions

ETA
Schedule V, Part VI, sections 3 and 3.1

Existing section 2 of Part VI of Schedule V sets out the general rule that supplies by charities of personal property or services are exempt unless specifically excluded from the exemption. As noted in the commentary on clause 104 above, after 1996, section 2 of Part VI of Schedule V will apply only to persons newly defined to be "public institutions" under subsection 123(1) since new Part V.I sets out exemptions for charities separately.

Existing section 3 of Part VI contains an overriding exemption, which provides that those supplies that are otherwise carved out of the exemption under section 2 are nevertheless exempt under section 3 if, generally, the day-to-day administrative and other functions involved in carrying out the activity in which the supplies are made are performed exclusively – generally taken to mean 90 per cent or more – by volunteers.

The volunteer exemption has proven difficult to apply. To simplify the rules, the overriding volunteer rule is repealed, other exemptions are amended and added (as detailed in the commentary on new section 3.1 of Part VI of the Schedule) and the small suppliers' thresholds for public service bodies are increased (see commentary on clauses 9 and 10). These changes are made with the objective of preserving the non-taxable status of most supplies that currently fall under the volunteer rule but based on alternative tests that are easier to apply. It should be noted, however, that there may be cases where supplies formerly exempt under the volunteer rule will become taxable. For example, if a charity or public institution that exceeds the small supplier's threshold operates a gift shop using only volunteers, its sales of new goods made at the shop will become taxable.

New section 3 of Part VI of Schedule V exempts all admissions by public institutions to a dinner, ball, concert or similar fund-raising event where a portion of the admission price can be treated as a charitable donation for income tax purposes. The amendment to section 3 is consistent with the fund-raising rule applicable to charities in new section 2 of Part V.I of Schedule V (see commentary on clause 102).

New section 3.1 exempts most supplies by public institutions that are made in the course of fund-raising activities where such supplies are not made on a regular or continuous basis throughout the year or a significant portion of the year and do not entitle the recipients to receive property or services from the institution throughout the year or a significant portion of the year. Also, the exclusions that apply to the existing volunteer exemption will apply to this new exemption provision. This provision is consistent with the new fund-raising rule for charities in section 3 of new Part V.1 of the Schedule (see commentary on clause 102).

Existing section 3 is repealed and replaced in respect of supplies for which consideration becomes due, or is paid without having become due, after 1996 except that new section 3 does not apply to supplies of admissions to events for which admissions have been supplied before 1997. In that case, the existing rules continue to apply so that all admissions to a particular event will receive the same treatment.

Clause 106

Bingos, Raffles, etc.

ETA
Schedule V, Part VI, section 5.1

Existing section 5.1 of Part VI of Schedule V exempts the gambling proceeds to a charity or non-profit organization that conducts a bingo, raffle or casino betting, or otherwise sells rights to play or participate in a game of chance. The exemption does not apply to sales of rights by any non-profit organization that is prescribed in the *Games of Chance (GST) Regulations*, nor does it apply to any sale by a charity or non-profit organization of rights to play or participate in lotteries or other games of chance conducted by prescribed persons.

Section 5.1 is amended to replace the reference to "charity" with a reference to a "public institution", which is a person that is a local authority designated as a municipality for all purposes of Part IX, university, public college, hospital authority or school authority and that is a registered charity for purposes of the *Income Tax Act* (see commentary on the definition "public institution" under clause 1). This amendment is consequential to the addition of new Part V.1 to Schedule V, which sets out the exemptions for supplies by charities. The exemption for gambling activities continues to apply to charities but under section 1 of new Part V.1, with the same exclusion for prescribed persons and games of chance in paragraph 1(*i*) of that Part (see the commentary on clause 102).

This amendment applies to supplies for which consideration becomes due, or is paid without having become due, after 1996.

Clause 107

Bets on Casino Games, Races, Etc.

ETA
Schedule V, Part VI, paragraph 5.2(*a*)

Existing section 5.2 of Part VI of Schedule V exempts the gambling proceeds to a charity or non-profit organization, other than a prescribed lottery corporation, that conducts a casino event. All pari-mutuel betting on horse races is also exempt under this section. Nonetheless, admissions to casinos or racetracks are taxable.

Paragraph 5.2(*a*) is amended to replace the reference to a "charity" with a reference to a "public institution", which is newly defined in subsection 123(1) as a person that is a local authority designated as a municipality for all purposes of Part IX, university, public college, hospital authority or school authority and that is a registered charity within the meaning of the *Income Tax Act* (see commentary on the definition "public institution" under clause 1). This amendment to section 5.2 is consequential to the addition of new Part V.1 to Schedule V, which sets out the exemptions for supplies by charities. The exemption for gambling activities continues to apply to charities but under section 1 of that Part, with the same exclusion for prescribed persons under new paragraph 1(*i*).

This amendment applies to supplies for which consideration becomes due, or is paid without having become due, after 1996.

Clause 108

Direct Cost Exemption for Public Service Bodies

ETA
Schedule V, Part VI, sections 6 to 8

Existing section 6 of Part VI of Schedule V exempts certain supplies by public service bodies made for consideration that does not exceed the direct cost of the supplies. Under the existing legislation, "direct cost " is defined in section 1 of that Part. An amendment is made to move this definition to subsection 123(1) so that it also applies to new Part V.1, which sets out the exemptions for supplies by "charities" as newly defined in subsection 123(1) (see commentary on that definition under clause 1). Accordingly, section 6 will apply only to public service bodies other than those defined to be charities. The section is amended to provide that supplies by a public service body will be exempt where:

- the total charge by the body for the supply is equal to or is less than the tax-included direct cost of the good or service (as newly defined in subsection 123(1)) and the body does not charge the recipient an amount as tax; or

- the consideration for the supply (which does not include tax on the supply) is less than the tax-excluded direct cost of the good or service (i.e., where the body sells the good or service for less consideration than the body paid for it) and the body charges the recipient an amount as tax.

Existing section 7 of Part VI exempts services supplied by public service bodies for direct cost or less in the course of special events or activities that are not part of an ongoing business. Section 7 is repealed as a consequence of the revised definition "direct cost" (see commentary on that definition under clause 1). This definition applies, in the case of services, only where they are purchased for resale. The existing provision contemplates an exemption for services produced by the public service body. However, this exemption has proven difficult to apply and, as a result, simpler, more straightforward rules, such as the fund-raising rule set out in section 3 of Part VI, are introduced (see commentary on clause 105).

Existing section 8 of Part VI provides an exemption for admissions to a film, slide show or similar presentation supplied by a public service body where the total revenue for all admissions to the presentation could not reasonably be expected to exceed the "direct cost" of the presentation. In this context, the direct cost is essentially the total of all costs of renting the film and equipment used in putting on the presentation.

Section 8 is repealed as a consequence of the new definition "direct cost", which no longer applies to supplies of films, slide shows and similar presentations (see commentary on that definition under clause 1).

The amendments to section 6 and the repeal of existing sections 7 and 8 apply in respect of supplies for which all of the consideration becomes due, or is paid without having become due, after 1996.

Clause 109

Admissions Not Exceeding One Dollar and Supplies for Nil Consideration

ETA
Schedule V, Part VI, sections 9 and 10

Section 9 Admissions

Section 9 of Part VI of Schedule V exempts admissions supplied by a public sector body where the maximum charge does not exceed one dollar. The wording of this section is amended to be consistent with that of the parallel provision under paragraph 1(*e*) of new Part V.1 of the Schedule applicable to charities.

This amendment applies to supplies made after April 23, 1996.

Section 10 Nil Consideration

Section 10 of Part VI of Schedule V exempts supplies by a public sector body of property or services where all or substantially all of the body's supplies of the property or service are made free of charge. Such supplies are not considered to be made in the course of a commercial activity.

Section 10 is amended to exclude the supply of blood and blood derivatives from the exemption. This will ensure that such supplies will continue to be zero-rated under Part I of Schedule VI, even though they are supplied free of charge.

This amendment is effective as of January 1, 1991.

The French version of section 10 is also amended, for supplies made after April 23, 1996, to replace the reference to "such" supplies with a more specific reference to "the" supplies, to be consistent with the wording of the English version.

It should be noted that, as a result of the amendment to the definition "public sector body" for purposes of Part VI of Schedule V, that Part does not apply to a "charity" (as newly defined in subsection 123(1)) as of January 1, 1997 (see commentary on clause 103). Instead, a similar provision for charities is found in section 5 of new Part V.1 of Schedule V.

Clause 110

Recreational Services

ETA
Schedule V, Part VI, paragraph 12(*b*)

Paragraph 12(*b*) of Part VI of Schedule V is amended to replace the expression "mentally or physically disabled individuals" with the more generally accepted expression "individuals with a disability".

The amendment is effective on Royal Assent.

Clause 111

Recreational Camps

ETA
Schedule V, Part VI, section 13

Section 13 of Part VI of Schedule V is amended to replace the expression "mentally or physically disabled individuals" with the more generally accepted expression "individuals with a disability".

The amendment is effective on Royal Assent.

Clause 112

Meal Programs

ETA
Schedule V, Part VI, section 15

Section 15 of Part VI of Schedule V is amended to replace the expression "disabled individuals" with the more generally accepted expression "individuals with a disability". In addition, the term "aged" is replaced with the term "seniors".

The amendment is effective on Royal Assent.

Clause 113

Memberships and Other Supplies by Registered Parties

ETA
Schedule V, Part VI, section 17

Existing section 17 of Part VI of Schedule V provides for exemptions and elections for certain supplies of memberships in public sector bodies. Memberships supplied by charities, which excludes "public institutions" as newly defined in subsection 123(1), continue to be exempt but under new Part V.I of Schedule V (see commentary on clause 102). Memberships in public institutions are exempt under amended section 2 of Part VI of Schedule V (see commentary on clause 104).

Section 17 is amended so as not to apply to memberships supplied by a registered party, which includes political parties, candidates and referendum committees. New section 18.1 exempts those memberships without providing for an election to treat the memberships as taxable.

Clause 113.1

Registered Parties

ETA
Schedule V, Part VI, sections 18.1 and 18.2

New section 18.1 exempts the supply of a membership in a registered party as newly defined in section 1 of this Part (see subclause 103(3)). Therefore, the registered party is not required to collect tax on the memberships and is not entitled to claim input tax credits for inputs relating to those supplies. There is no election to treat the supplies as taxable.

New section 18.2 of Part VI of Schedule V exempts any supply by a registered party where part of the consideration for the supply is a contribution to the registered party for which the recipient is entitled to claim a political contributions deduction or credit for income tax purposes. This broadens the existing relief provided under section 164, which provides that only that portion of the consideration that is a contribution is free of tax. New section 18 exempts the entire supply. Accordingly, no input tax credits will be available in respect of the inputs used in making the supply.

This provision is consistent with the revised treatment of supplies of admissions to dinners, balls, concerts and similar events by charities and public institutions (see the commentary on clauses 102 and 105 respectively).

New section 18.1 applies to any supply of a membership made after April 23, 1996 except where a written offer or invoice for that supply was issued before June 1996. New section 18.2 of Part VI of

Schedule V applies to supplies made after 1996 except for supplies of admissions to events for which any admissions are supplied before 1997. The existing rules will apply to the latter supplies.

Clause 114

Supplies by Municipalities and Governments

ETA
Schedule V, Part VI, section 20

Subclause 114(1)

Zoning and Assessment Information

ETA
Schedule V, Part VI, Paragraph 20(*e*)

Existing paragraph 20(*e*) of Part VI of Schedule V describes information services and certain documents that are exempt when supplied by a government, municipality or a board, commission or other body established by a government or municipality.

The amendment to paragraph 20(*e*) adds to the list of exempt services the supply of information, or any certificate or other document, in respect of the zoning of real property or any assessment in respect of property.

It should be noted that the change-of-use rules may apply where the capital property of municipalities used primarily in taxable activities begins to be used primarily in exempt activities as a result of the amendment. (Reference should also be made to section 198.1 of the Act.)

The amendment applies to supplies for which all of the consideration becomes due after 1996 or is paid after 1996 without having become due.

Subclause 114(2)

Garbage Collection

ETA
Schedule V, Part VI, paragraph 20(*h*)

Existing paragraph 20(*h*) of Part VI of Schedule V exempts garbage collection services provided by a government, municipality or a board, commission or other body established by a government or municipality, other than collection services that are not part of the basic service that is supplied on a regularly scheduled basis by the government or municipality. Amended paragraph 20(*h*) extends the exemption to all garbage collection services provided by such entities. For example, a special collection of used electrical appliances, which was not part of a regularly scheduled service, would be exempt when provided by these entities.

It should be noted that the change-of-use rules for capital property may apply where, as a result of this amendment, capital property of a municipality used primarily in taxable activities begins to be used primarily in exempt activities. (Reference should also be made to section 198.1 of the Act.)

The amendment applies to services performed after 1996.

Amended paragraph 20(*h*) also clarifies, as of January 1, 1991, that the collection of garbage includes the collection of recyclable materials. This exemption applies to the collection of recyclables as part of a curbside or neighbourhood collection program as well as to the delivery of such recyclables by the municipality, government or other body to a recycling facility. The processing of recyclables at material recycling facilities is considered to be a commercial activity, and the sale of recyclables by a registrant is taxable.

Clause 115

Municipal Services

ETA
Schedule V, Part VI, sections 21 to 24

Section 21 General Exemption for Municipal Services

Section 21 of Part VI of Schedule V contains a general exemption for standard municipal services provided to property owners in a particular locale. This includes such services as road building and street lighting. In most municipalities, these services are financed from general revenues. In some cases, the municipality may identify the cost of the service separately to the resident. This provision is intended to ensure that such charges are not taxable. Optional services supplied to individual households on a fee-for-service basis are not covered under the exemption and are taxable unless they are exempt under another section of the Schedule.

Amended section 21 clarifies that municipal services performed by or on behalf of a municipality or government as a result of an owner's or occupant's failure to comply with an obligation imposed under a law are treated as a non-optional service and therefore exempt. For example, if a homeowner or occupant fails to control the growth of weeds on his or her property, thereby violating a municipal by-law, and if the municipality cuts the weeds as a result of the owner or occupant's failure to do so and charges for the service, the service is exempt.

The amendment applies to supplies for which any consideration becomes due or is paid without having become due after April 23, 1996.

Section 21.1 Exempt Optional Services

New section 21.1 of Part VI of Schedule V exempts the supply of a number of services when made by a municipality or by a board, commission or other body established by a municipality. Services currently exempt under section 21 of this Part include road repair and maintenance, snow removal and tree pruning where they are provided to property owners as a standard municipal service. However, section 21 does not exempt these services where they are supplied to individual households on a fee-for-service basis. New section 21.1 makes all supplies of these services exempt when provided by a municipality or by a body established by a municipality.

It should be noted that the change-of-use rules may apply where capital property used primarily in taxable activities begins to be used primarily in exempt activities as a result of the amendment (reference should also be made to section 198.1 of the Act.)

New section 21.1 applies to supplies for which any consideration becomes due or is paid without having become due after 1996.

Section 22 Water, Sewerage or Drainage Services

Section 22 of Part VI or Schedule V exempts the supply of a service of installing, repairing or maintaining a water distribution, sewerage or drainage system that is for the use of an owner or occupant of real property where the supply is made by a municipality or by an organization that operates such a system and is designated as a municipality by the Minister of National Revenue for the purposes of this section. Under the existing provision, where a separate fee is charged to a property owner or occupant to repair or maintain part of an existing system that is for the sole use of the owner or occupant, the supply is taxable.

Section 22 is amended to eliminate the exception and also to exempt the service of interrupting the operation of such a system. For example, where a municipality repairs that part of a water distribution system that is for the sole use of a homeowner, and the municipality bills the homeowner, the fee will not be subject to tax.

It should be noted that the change-of-use rules may apply where the capital property of a municipality used primarily in taxable activities begins to be used primarily in exempt activities as a result of the amendment (reference should also be made to section 198.1 of the Act).

The amendment applies to supplies for which any consideration becomes due after 1996 or is paid after 1996 without having become due.

Section 23 Supplies of Unbottled Water

Section 23 of Part VI of Schedule V exempts certain supplies of unbottled water when made by a person other than a government or by a government designated by the Minister of National Revenue to be a municipality for the purposes of this section.

The amendment clarifies that the service of delivering the water is also exempt only where the delivery is made by the person who supplies the water, and that supply of water is exempt.

The amendment applies to supplies for which all of the consideration becomes due or is paid without having become due after April 23, 1996.

Section 24 Municipal Transit Services

Section 24 of Part VI of Schedule V exempts a supply of a municipal transit service. "Municipal transit service" is defined in section 1 of this Part as a public passenger transportation service supplied by a transit authority all or substantially all of whose services are provided within a particular municipality and its surrounding areas. "Transit authority" is also defined in section 1 of this part. A municipal transit service does not include a charter service or a service that is part of a tour. For example, where a school charters a city bus for a special field trip, or a local transit authority offers sight-seeing tours of a city, the service is taxable. The Minister of National Revenue is given the authority to designate a particular public transportation service to be an exempt municipal transit service.

This provision is intended to exempt only services supplied directly to the public. For example, if an organization contracts with a municipality to provide transit services to the public on behalf of the municipality, the charges to the public are exempt. However, any charges by the organization to the transit authority for the provision of these services are intended to be taxable. Rather than relying on this as a criterion of designation, the section is amended to specify therein that the supply must be made to a member of the public.

The amendment applies to supplies for which all of the consideration becomes due or is paid without having become due after April 23, 1996.

Clause 116

Supplies of Real Property by Public Service Bodies

ETA
Schedule V, Part VI, section 25

Section 25 of Part VI of Schedule V lists exempt supplies of real property by public service bodies. It should be noted that, as a result of the amendment to the definition "public service body" in section 1 of Part VI, section 25 will not apply to charities (as newly defined in subsection 123(1)) as of January 1, 1997. Rather, as of that day, the special exemptions for supplies of real property by charities are contained in section 1 of new Part V.1 of Schedule V (see commentary on clause 102).

Subclause 116(1)

Sales of Vacant Land

ETA
Schedule V, Part VI, paragraph 25(*c*)

Paragraph (*c*) of section 25 of Part VI of Schedule V excludes from the exemption under that section sales of vacant land to an individual or a trust all of the beneficiaries of which are individuals and all the contingent beneficiaries of which are individuals or charities.

Paragraph 25(*c*) is amended as a consequence of the new definition "personal trust" in subsection 123(1) (see commentary on the definition of that term under clause 1). The term "personal trust" encompasses the type of trust referred to in existing paragraph 25(*c*). However, this term is somewhat broader in that it includes all testamentary trusts, regardless of who the beneficiaries are. As a result, a sale by a public service body of vacant land to a testamentary trust will not be exempt under this provision.

This amendment applies to supplies made after April 23, 1996.

Subclause 116(2)

Short-Term Leases

ETA
Schedule V, Part VI, paragraph 25(*f*)

Paragraph 25(*f*) excludes supplies made under a lease with a term of less than one month from the exemption for supplies of real property by a public service body. The amendment clarifies that the test is based on a period of continuous possession or use.

This clarification is consistent with similar wording changes made to the definitions "residential complex" and "residential trailer park" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 6, 7 and 8.1 of Part I of Schedule V.

For consistency, these wording changes are all effective on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any amount claimed as a deduction under subsection 232(3) in a return under Division V, or as a rebate in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

Subclause 116(3)

Sales of Seized or Repossessed Real Property

ETA
Schedule V, Part VI, paragraph 25(*i*)

New paragraph 25(*i*) of Part VI of Schedule V is added to carve out of the exemption for supplies of real property by a public service body any supply of property that the body has, as a creditor, seized or repossessed in circumstances where subsection 183(1) of the Act applied.

For example, a municipality can, under the law of some provinces, cause the supply of real property of a person who defaults in paying municipal taxes. According to the rules set out in subsections 183(1) and (10), the municipality in this case would be deemed to have seized the property and would be considered to be the person making the supply. New paragraph 25*(i)* of Part VI of Schedule V ensures that the supply is not subject to the exemption under section 25.

This amendment applies to supplies made after April 23, 1996. It also applies to any supply made on or before that day unless no amount of tax was, on or before that day, charged or collected in respect of the supply, or, if an amount of tax was charged or collected before that day, the Minister of National Revenue received, before that day, an application under subsection 261(1) for a rebate in respect of that amount or a return in which a deduction under subsection 232(1) was claimed.

Clause 117

Inter-Municipal Supplies

ETA
Schedule V, Part VI, section 28

Section 28 of Part VI of Schedule V exempts certain supplies between municipalities and their "para-municipal" organizations (which are defined in section 1 of that Part). This exemption recognizes that many municipalities provide municipal services through semi-autonomous bodies that they establish, such as irrigation authorities or fire departments. These organizations are generally referred to as para-municipal organizations.

New paragraph *(f)* of section 28 excludes from the inter-municipal supply rules a supply of electricity, gas, steam or telecommunication services made by a para-municipal organization (as defined in section 1 of this Part) that acts as a public utility, or a branch or division of such an organization that acts in that capacity. The amendment will ensure consistency in the GST treatment of supplies by public utility organizations. Under the existing legislation, municipalities that own or control a public utility organization are able to purchase electricity, gas, steam or telecommunications services on an exempt basis while municipalities that do not own or control a public utility organization must pay tax on these supplies. The amendment eliminates this inequity.

It should be noted that the change-in-use rules under Subdivision d of Division II may apply, e.g., where the capital personal property of public utilities used primarily in exempt activities begins to be used primarily in taxable activities as a result of the amendment.

While the supply of electricity, gas, steam or telecommunications services by a public utility organization to a municipality is excluded from the exemption, supplies of property or services by a municipality to a public utility organization that it owns and controls may continue to qualify for the exemption. For example, a municipality will continue to be able to provide such services such as legal or accounting services on an exempt basis to the public utilities that it owns or controls.

New paragraph 28(*f*) applies to supplies of electricity, gas, steam or telecommunications services for which consideration becomes due, or is paid without having become due, after April 23, 1996.

Clause 118

Definitions – Prescription Drugs and Biologicals

ETA
Schedule VI, Part I, section 1

Section 1 of Part I of Schedule VI defines several terms that are used throughout the Part.

Subclause 118(1)

Definition "practitioner"

ETA
Schedule VI, Part I, section 1

The term "practitioner" used in Part I of Schedule VI is repealed and replaced by the term "medical practitioner" for consistency with the terminology used in Part II of Schedule V to describe the same type of individual.

The amendment applies as of April 23, 1996.

Subclause 118(2)

Definition "prescription"

ETA
Schedule VI, Part I, section 1

The amendment to the definition "prescription" in section 1 of Part I of Schedule VI is consequential to the amendment to the definition "practitioner" in this section. The term "practitioner" is replaced by the term "medical practitioner".

This amendment applies as of April 23, 1996.

Subclause 118(3)

ETA
Schedule VI, Part I, Definition "medical practitioner"

The definition "medical practitioner" is added for purposes of Part I of Schedule VI. The term replaces the term "practitioner" for consistency with Part II of Schedule V.

This amendment applies as of April 23, 1996.

Clause 119

Supply of a Drug

ETA
Schedule VI, Part I, section 3

The amendments to paragraphs (*a*) and (*b*) of section 3 of Part I of Schedule VI are consequential to the amendment to the definition "practitioner" in section 1 of this Part (see commentary on clause 118). The amendment replaces the term "practitioner" with the term "medical practitioner" for consistency with the term used in Part II of Schedule V.

The amendment applies to supplies made after April 23, 1996.

Clause 120

Medical and Assistive Devices

ETA
Schedule VI, Part II, heading

The heading for Part II of Schedule V is amended, effective on Royal Assent, to read "Medical and Assistive Devices", to better describe the types of property that are zero-rated under this Part.

Clause 121

Definition "practitioner"

ETA
Schedule VI, Part II, section 1

The definition "practitioner" in section 1 of Part II of Schedule VI is amended to read "medical practitioner" for consistency with the term used in Part II of Schedule V.

The amendment applies as of April 23, 1996.

Clause 122

Medical Devices

ETA
Schedule VI, Part II, sections 2 to 4

Section 2 Communication Devices

Amended section 2 of Part II of Schedule VI is an amalgamation of existing section 2 and existing subparagraph 2(*d*)(iv) of the *Medical Devices (GST) Regulations*, which will be repealed. Amended section 2 therefore applies to all communication devices that are specially designed for use by an individual with a hearing, speech or vision impairment, and no longer contains a prescription requirement for communication devices for use with a telegraph or telephone apparatus.

The amendment applies to supplies for which consideration becomes due, or is paid without having become due, after April 23, 1996.

Section 3 Heart Monitoring Device

Section 3 of Part II of Schedule VI is amended to replace the term "practitioner" with the term "medical practitioner". This amendment is consequential to the repeal of the definition "practitioner" in this Part (see commentary on clause 121).

The provision is also amended to ensure that devices supplied under a prescription issued to a consumer are zero-rated regardless of who the legal recipient of the supply is.

The amendments apply to supplies for which consideration becomes due or is paid without having become due after April 23, 1996.

Section 4 Hospital Beds

Existing section 4 of Part II of Schedule VI zero-rates the supply of a hospital bed to individuals when the supply is made on the written order of a medical practitioner or to hospital authorities. The amendment extends the unconditional zero-rating to operators of any health care facilities. This would include long-term care facilities.

The intent of the legislation is to zero-rate only beds that are specially designed for patient care, which are similar to those used in hospitals. Beds with adjustable mattresses that can be purchased by individuals at department stores and are designed primarily to provide increased comfort are not zero-rated.

The section is also amended to replace the term "practitioner" with the term "medical practitioner" as a consequence of the amendment to section 1 of this Part (see commentary on clause 121).

These amendments apply to supplies for which consideration becomes due, or is paid without having become due, after April 23, 1996.

Clause 123

Artificial Breathing Apparatus

ETA
Schedule VI, Part II, section 5 of French Version

The French version of section 5 of Part II of Schedule VI is amended to replace the reference to a person "suffering" from a respiratory disorder with a reference to a person "having" such a disorder.

This amendment is effective on Royal Assent.

Clause 124

Aerosol Chamber and Respiratory Monitor

ETA
Schedule VI, Part II, sections 5.1 and 5.2

Section 5.1 Aerosol Chamber

Section 5.1 of Part II of Schedule VI is amended to replace the term "practitioner" with the term "medical practitioner". This amendment is consequential to the repeal of the definition "practitioner" in this Part (see commentary on clause 121).

The section is also amended to ensure that the devices described therein are zero-rated when supplied under a prescription issued to a consumer, regardless of who the legal recipient of the supply is.

These amendments apply to supplies made after April 23, 1996.

Section 5.2 Respiratory Monitor

New section 5.2 of Part II of Schedule VI zero-rates a supply of a respiratory monitor, nebulizer, tracheostomy supply, gastro-intestinal tube, dialysis machine, infusion pump or intravenous apparatus, that can be used in the residence of an individual. Specifically, the devices are zero-rated when they are specially designed to be used in an environment outside the hospital.

New section 5.2 incorporates references to medical devices contained in existing paragraph 2(*a*) of the *Medical Devices (GST) Regulations*, which will be repealed.

The amendment applies to supplies made after April 23, 1996.

Clause 125

Zero-Rated Assistive Devices

ETA
Schedule VI, Part II, sections 7 and 8

Section 7 Device to Convert Sound to Light Signals

Section 7 of Part II of Schedule VI is amended to replace the term "practitioner" with the term "medical practitioner". This amendment is consequential to the repeal of the definition "practitioner" in this Part (see commentary on clause 121).

The section is also amended to ensure that the devices described therein are zero-rated when supplied under a prescription issued to a consumer, regardless of who the legal recipient of the supply is.

These amendments apply to supplies made after April 23, 1996.

Section 8 Selector Control Device

Section 8 of Part II of Schedule VI is amended to replace the expression "physically disabled individual" with the more generally accepted expression "individual with a disability".

The amendment is effective on Royal Assent.

Section 9 Eye Glasses and Contact Lenses

Section 9 of Part II of Schedule VI is amended to ensure that eye glasses and contact lenses are zero-rated when supplied, for the treatment or correction of a defect of vision, under a prescription issued to a consumer, regardless of who the legal recipient of the supply is.

This amendment applies to supplies made after April 23, 1996.

Clause 126

Orthodontic Appliances

ETA
Schedule VI, Part II, section 11.1

New section 11.1 of Part II of Schedule VI unconditionally zero-rates a supply of an orthodontic appliance. Under the existing legislation, these appliances are zero-rated unconditionally under section 23 of this Part as an orthopaedic brace.

The amendment applies to supplies for which all of the consideration becomes due or is paid without having become due after April 23, 1996.

Clause 127

Aids to Locomotion and Patient Lifters

ETA
Schedule VI, Part II, sections 14 and 15

Sections 14 and 15 of Part II of Schedule VI are amended to replace the expression "disabled individual" with the more generally accepted expression "individual with a disability".

These amendments are effective on Royal Assent.

Clause 128

Medical Devices

ETA
Schedule VI, Part II, sections 18 to 20

Section 18 Auxiliary Driving Control

Section 18 of Part II of Schedule VI is amended to replace the expression "physically disabled individual" with the more generally accepted expression "individual with a disability".

The amendment is effective on Royal Assent.

Section 18.1 Vehicles Adapted for Use with a Wheelchair

Existing section 18.1 of Part II of Schedule VI zero-rates the service of modifying a motor vehicle such as a car or a mini-van to meet the needs of an individual with a disability and requiring the use of a wheelchair. Goods supplied in conjunction with the service would also be zero-rated where these are necessary to the modification of the vehicle for the stated purpose.

Existing section 18.1 requires the vehicle to be owned by an individual. Amended section 18.1 eliminates this restriction and extends the zero-rating to cases where the vehicle is owned by non-individuals, such as corporations, associations, or municipal or governmental organizations.

The amendment applies to supplies for which any consideration becomes due after April 23, 1996 or is paid after that day without having become due.

Sections 19 and 20 Patterning Device and Toilet-, Bath- or Shower-Seat

Sections 19 and 20 of Part II of Schedule VI are amended to replace the expression "disabled individual" with the more generally accepted expression "individual with a disability".

These amendments are effective on Royal Assent.

Clause 129

Extremity Pumps and Catheters

ETA
Schedule VI, Part II, sections 21.1, 21.2 and 21.3

Sections 21.1 and 21.2 of Part II of Schedule VI are amended to replace the term "practitioner" with the term "medical practitioner". This amendment is consequential to the repeal of the definition "practitioner" in this Part (see commentary on clause 121).

These sections are also amended to ensure that the devices described therein are zero-rated when supplied under a prescription issued to a consumer, regardless of who the legal recipient of the supply is.

These amendments apply to supplies made after April 23, 1996.

In addition, the reference to the supply of a lancet has been deleted from section 21.2 and included in new section 21.3. This means that the zero-rating of lancets will no longer be contingent on the supply being made to a consumer on the written order of a practitioner.

This amendment applies to supplies of lancets for which consideration becomes due or is paid after 1996.

Clause 130

Orthotic and Orthopaedic Devices

ETA
Schedule VI, Part II, sections 23 and 23.1

Amended section 23 of Part II of Schedule VI combines sections 23 and 23.1 to clarify the treatment of orthotic and orthopaedic devices. Amended section 23 unconditionally zero-rates the supply of orthotic or orthopaedic devices that are made to order for an individual. It should be noted that orthodontic appliances are unconditionally zero-rated under new section 11.1. All other orthotic and orthopaedic devices will be zero-rated only where they are purchased under a prescription issued by a medical practitioner to a consumer. Therefore, items, such as cradle arm slings, cervical collars, knee braces and obus forms, are taxable at a rate of seven per cent unless purchased on the written order of a medical practitioner.

As of April 23, 1996, the term "medical practitioner" is used instead of "practitioner" for consistency with the terminology used in Part II of Schedule V. The other amendments apply to supplies for which all of the consideration becomes due, or is paid without having become due, on or after May 14, 1996.

Clause 131

Appliance for Individual with Crippled or Deformed Foot

ETA
Schedule VI, Part II, section 24 of French version

Section 24 of Part II of Schedule VI to the French version of the Act is amended to replace the reference to persons "suffering" from a disability or deformity of the foot or ankle with a reference to persons "having" such a disability or deformity of the foot or ankle.

This amendment is effective on Royal Assent.

Clause 132

Specially Designed Footwear

ETA
Schedule VI, Part II, section 24.1

Existing paragraph 2(*c*) of the *Medical Devices (GST) Regulations* zero-rates footwear that is specially designed for an individual with a crippled or deformed foot or similar disability. That provision will be repealed and replaced with new section 24.1 of Part II of Schedule VI, which requires that such footwear be supplied on the written order of a medical practitioner in order to be zero-rated.

New section 24.1 applies to supplies for which all of the consideration becomes due or is paid without having become due after 1996.

Clause 133

Cane or Crutch

ETA
Schedule VI, Part II, section 27

Section 27 of Part II of Schedule VI is amended to replace the expression "physically disabled individual" with the more generally accepted expression "individual with a disability". In addition, the word "specially" has been added before the term "designed" to make it consistent with the wording of similar provisions in this Part.

The amendment is effective on Royal Assent.

Clause 134

Articles Specially Designed for Blind Individuals

ETA
Schedule VI, Part II, section 30

Section 30 of Part II of Schedule VI is amended to replace the term "practitioner" with the term "medical practitioner". This amendment is consequential to the repeal of the definition "practitioner" in this Part (see commentary on clause 121).

In addition, the expression "the blind" is replaced by the more generally accepted expression "blind individuals".

The amendment applies to supplies made after April 23, 1996.

Clause 135

Guide Dogs

ETA
Schedule VI, Part II, sections 33 and 33.1 of French Version

Sections 33 and 33.1 of Part II of Schedule VI to the French version of the Act are amended to use more generally accepted terminology and to correct grammatical errors.

These amendments are effective on Royal Assent.

Clause 136

Assistive Devices

ETA
Schedule VI, Part II, sections 34 to 40

Section 34 Service in Respect of Medical Device

Section 34 zero-rates supplies of certain services, such as repair or maintenance services, in respect of zero-rated medical devices. As a number of these devices that are currently listed in the Regulations are added to the list in this Schedule, the cross-references in section 34 are amended accordingly.

Sections 35 and 36 Graduated Compression Stocking and Specially Designed Clothing

Sections 35 and 36 of Part II of Schedule VI are amended to replace the term "practitioner" with the term "medical practitioner". This amendment is consequential to the repeal of the definition "practitioner" in this Part (see commentary on clause 121).

In addition, the expression "disabled individual" in section 36 is replaced with the more generally accepted expression "individual with a disability".

Finally, the sections are amended to ensure that the articles described therein are zero-rated when supplied under a prescription issued to a consumer, regardless of who the legal recipient of the supply is.

These amendments apply to supplies made after April 23, 1996.

Sections 37 to 40

These sections deal with assistive devices that are currently prescribed under the *Medical Devices (GST) Regulations*. They are added to Part II of Schedule VI so that all of the existing provisions zero-rating medical or assistive devices may be found in the body of the Act as opposed to the Act and those Regulations. The repeal of those Regulations, and these additions to the Schedule, will apply in respect of supplies made after April 23, 1996.

Section 37 Incontinence Products

New section 37 of Part II of Schedule VI zero-rates a supply of an incontinence product that is specially designed for use by an individual with a disability. This includes a broad range of briefs, pants, pads and underpads – disposable and reusable – that are specially designed to assist an individual in coping with an incontinence disorder. Baby diapers are not included under this section.

New section 37 incorporates the reference to incontinence products contained in subparagraph 2(*d*)(i) of the *Medical Devices (GST) Regulations*.

Section 38 Feeding Utensils

New section 38 of Part II of Schedule VI zero-rates a supply of a feeding utensil or other gripping device that is specially designed for use by an individual with impaired use of hands or similar disability. New section 38 replicates paragraph 2(*b*) of the *Medical Devices (GST) Regulations*.

Section 39 Reaching Aids

New section 39 of Part II of Schedule VI zero-rates a supply of a reaching aid. These goods must be specially designed to assist an individual with a disability in order to be supplied on a zero-rated basis. New section 39 incorporates the reference to reaching aids contained in subparagraph 2(*d*)(ii) of the *Medical Devices (GST) Regulations*.

Section 40 Prone Boards

New section 40 of Part II of Schedule VI zero-rates a supply of a prone board that is specially designed for use by an individual with a disability. These are devices that provide a safe support at a range of angles between the prone and standing positions. The device must be specially designed to assist an individual with a disability in order to be supplied on a zero-rated basis.

New section 40 incorporates references to prone boards currently contained in subparagraph 2(*d*)(iii) of the *Medical Devices (GST) Regulations*.

Clause 137

Basic Groceries

ETA
Schedule VI, Part III, section 1

Section 1 of Part III of Schedule VI to the Act describes supplies of food and beverages for human consumption that are generally zero-rated, unless they are specifically excluded by paragraphs (*a*) to (*r*) of that section.

Subclause 137(1)

Non-Alcoholic Malt Beverages

ETA
Schedule VI, Part III, paragraph 1(*b*)

The amendment deletes paragraph 1(*b*), which refers to "non-alcoholic malt beverages". These products are already included under other provisions such as paragraph 1(*c*), which refers to carbonated beverages.

This amendment is effective on Royal Assent.

Subclause 137(2)

Juice Bars and Frozen Non-Dairy Substitutes

ETA
Schedule VI, Part III, paragraphs 1(*j*) and (*k*)

Existing paragraph 1(*j*) excludes ice lollies from zero-rated treatment. The amendment adds a reference to juice bars and products that are similar to ice lollies, or flavoured, coloured or sweetened ice waters. Therefore, juice bars and similar products will be taxable.

Existing paragraph 1(*k*) refers to ice cream, ice milk, sherbet and frozen yoghurt or frozen puddings packaged in single servings. The amendment adds a reference to non-dairy substitutes of any of these products. In addition, to be included in paragraph (*k*) and, therefore, taxable, products must be either packaged or sold in single servings, which is consistent with the criteria under subparagraph 1(*o*)(v).

These amendments apply to supplies for which all of the consideration becomes due or is paid without having become due on or after May 14, 1996.

Subclause 137(3)

Prepared Food or Beverages

ETA

Schedule VI, Part III, paragraphs 1(*o*) to (*o*.5)

Existing paragraph 1(*o*) lists certain prepared foods and beverages that are taxable under the GST. Amended paragraph 1(*o*) retains this exclusion from zero-rated treatment for food and beverages that are heated for consumption.

New paragraph 1(*o*.1) replaces existing subparagraph 1(*o*)(ii), which refers to "prepared salads". The new paragraph refers to salads that are not canned or vacuum sealed. This ensures that canned prepared salads are not caught by the exclusion as a result of the deletion of the words "sold in a form suitable for immediate consumption". For example, fruit salad in a can will continue to be zero-rated.

New paragraph 1(*o*.2) replaces existing subparagraph 1(*o*)(iii) dealing with sandwiches and similar products. The new paragraph differs only in that it includes the words "other than when frozen" as a substitute for the existing test of whether the product is sold "in a form suitable for immediate consumption".

Existing subparagraph 1(*o*)(iv), which excludes from zero-rated treatment platters and arrangements of prepared foods, is renumbered as new paragraph 1(*o*.3).

Existing subparagraph 1(*o*)(vi) is renumbered as paragraph 1(*o*.4).

New paragraph 1(*o*.5) refers to food and beverages sold under, or in conjunction with, a catering contract. This clarifies that, where food is provided along with the service of catering, the supplies of the food and the service are taxable.

These amendments apply to supplies for which all of the consideration becomes due or is paid without having become due on or after May 14, 1996.

Clause 138

Grains or Seeds and Fodder Crops

ETA
Schedule VI, Part IV, section 2

Existing section 2 of Part IV of Schedule VI zero-rates supplies of grains or seeds in their natural state or treated for storage purposes or hay, silage or other fodder crops where these are ordinarily used to produce food for human consumption, or feed for livestock or poultry. To qualify for zero-rated treatment, they must be sold in quantities larger than those in which they are typically sold to consumers. Specifically excluded from the application of this section are grains, seeds or grain or seed mixtures to be used as feed for wild birds or as pet food.

The section is amended to include grains or seeds irradiated for storage purposes.

This amendment applies to supplies of grains or seeds for which any consideration becomes due after April 23, 1996, or is paid after that day without having become due.

Clause 139

Fertilizer

ETA
Schedule VI, Part IV, section 5

Existing section 5 of Part IV of Schedule VI zero-rates supplies of fertilizer sold in bulk or in containers of less than 25 kg of fertilizer where the total quantity of fertilizer supplied at a given time is at least 500 kg. Since some goods that contain fertilizer may be sold for use as topsoil for purposes other than commercial farming, this section is amended to ensure that these goods will not be zero-rated, regardless of the quantity sold.

This amendment applies to supplies made after April 23, 1996.

Clause 140

Supplies to Unregistered Foreign Carriers

ETA
Schedule VI, Part V, paragraph 2(*a*)

Existing section 2 of Part V of Schedule VI zero-rates supplies of property or services to a non-resident operator of a ship, aircraft or railway if the operator is not registered for the GST. The purpose of this provision is to ensure that such operators are not disadvantaged relative to operators who are GST registrants and, as such, are entitled to recover any tax paid by claiming input tax credits.

Existing paragraph (*a*) of that section provides zero-rated treatment to inputs acquired for consumption, use or supply in transporting passengers or freight to or from Canada. The amendment to paragraph 2(*a*) clarifies that, where the international carrier transports passengers or freight through Canada, the carrier will be able to acquire inputs on a zero-rated basis. For example, where an international carrier stops in Gander, Newfoundland to refuel in the course of a flight beginning and terminating outside Canada, the amendment ensures that the carrier will obtain the fuel on a zero-rated basis.

This amendment applies to supplies made after April 23, 1996.

Clause 141

Supplies of Fuel to International Carriers

ETA
Schedule VI, Part V, paragraph 2.1(*a*)

Existing section 2.1 of Part V of Schedule VI zero-rates a supply of fuel made to a registered carrier for use in providing international transportation services. This provision reduces the registered carrier's cash-flow costs associated with purchases of fuel, which is typically a carrier's single largest operating cost. The purpose of this provision is to ensure that such operators are not disadvantaged relative to unregistered foreign carriers whose purchases of fuel for international services are zero-rated under section 2 of this Part.

Existing paragraph 2.1(*a*) provides zero-rated treatment to fuel used in transporting passengers or freight to or from Canada. The amendment clarifies that the provision also applies where the registered carrier transports passengers or freight through Canada. An example is where a registered carrier makes a stop in Gander, Newfoundland for refuelling in the course of a flight beginning and terminating outside Canada. The amendment ensures that the registered carrier may obtain fuel on a zero-rated basis in these circumstances. This amendment parallels a similar change made to paragraph 2(*a*) of this Part (see commentary on clause 140).

This amendment applies to supplies of fuel made after April 23, 1996.

Clause 142

Services to Non-Residents

ETA
Schedule VI, Part V, sections 4 to 6.2

The amendment repeals and replaces existing sections 4 to 6 of Part V of Schedule VI to the Act. Each section is described below.

Section 4 Services Performed on Temporarily Imported Goods

Existing section 4 of Part V of Schedule VI zero-rates any service, other than a transportation service, performed on goods that are temporarily imported into Canada for the sole purpose of having the service performed. An example is where goods are produced in Canada and exported, then returned to Canada for repair. Section 8 of Schedule VII to the Act relieves the tax on the goods themselves that would otherwise be applicable at the time of the importation.

Section 4 is amended to clarify that zero-rated treatment extends to goods supplied in conjunction with the service. This measure ensures that parts and services supplied in these circumstances are both relieved of tax.

This amendment applies to supplies made after April 23, 1996.

Section 5 Agents' Services

Section 5 zero-rates a purchasing or selling agent's services to a non-resident person. In many situations, however, a representative of a non-resident person is not an "agent" of the non-resident person. The amendment broadens the scope of section 5 by extending it to services of arranging for, procuring or soliciting orders for supplies by or to a non-resident person.

As in the case of a service of acting as an agent of a non-resident person, to be zero-rated under amended section 5, the service must be in respect of a supply to the non-resident person that is zero-rated under Part V of Schedule VI or a supply made outside Canada by or to the non-resident person. For example, a purchasing representative may zero-rate services to a non-resident person of arranging for or procuring orders of goods that will either be exported on a zero-rated basis under section 1 of Part V of Schedule VI or supplied outside Canada to the non-resident person. It is not necessary that the purchasing representative have the authority to conclude the contracts for the purchase of the goods on behalf of the non-resident person.

Similarly, the service of a sales representative of arranging for, procuring or soliciting orders in Canada for a non-resident person may be zero-rated if the non-resident's supply is made outside Canada. In interpreting paragraph 5(*b*), it should be noted that certain supplies made by non-residents in Canada are considered under subsection 143(1) to be made outside Canada. Also, as in the case of services of purchasing representatives, it is not necessary that the sales representative have the authority to conclude the contract of sale in Canada on behalf of the non-resident person.

This amendment is effective January 1, 1991.

Section 6 Emergency Repair Services

A domestic carrier, such as a railway, is often responsible for repairing damages to cargo containers or conveyances belonging to other carriers while the containers or conveyances are in the domestic carrier's possession. Existing section 6 zero-rates the repair service if supplied to a non-resident person.

Amended section 6 contains the words "or transported" to ensure the section applies where the carrier is not necessarily "using" a particular conveyance or cargo container but merely transports it. Other minor wording changes are made for consistency with other provisions of Part V. For example, the word "goods" is changed to "property".

This amendment applies to supplies made after April 23, 1996.

Section 6.1 Repair of Railway Rolling Stock

Existing section 6 deals with repair services that are in respect of a conveyance or cargo container and are supplied by a carrier to a non-resident person. However, there are service providers who are not carriers. Under the existing rules, such suppliers would be at a competitive disadvantage relative to carriers and relative to non-resident suppliers of repair services. New section 6.1 zero-rates supplies made to unregistered non-residents of emergency repairs to railway rolling stock. Any repair parts supplied in conjunction with the zero-rated service are also zero-rated.

New section 6.1 applies to supplies made after April 23, 1996.

Section 6.2 Repair and Storage of Cargo Containers

New section 6.2 zero-rates a supply to an unregistered non-resident person of emergency repair services or storage services in respect of empty cargo containers where the container is for use exclusively in the international transport of freight and is classified under specified tariff items. Any repair parts supplied with the zero-rated service are also zero-rated.

New section 6.2 applies to supplies made after April 23, 1996.

Clause 143

Exported Services

ETA
Schedule VI, Part V, section 7

Section 7 of Part V of Schedule VI zero-rates exports of certain services supplied to non-resident persons.

Subclause 143(1)

Services Primarily for Consumption, Use or Enjoyment in Canada

ETA
Schedule VI, Part V, paragraphs 7(*a*) and (*a*.1)

The portion of the preamble to existing section 7 of Part V of Schedule VI that relates to the exclusion for supplies to non-resident individuals is replaced with new paragraph 7(*a*). This paragraph provides that a supply of a service to an individual may not be zero-rated under section 7 if the individual is in Canada at any time during which the individual has contact with the supplier in relation to the supply. This amendment does not alter the scope of the provision.

Existing paragraph 7(*a*), which excludes from zero-rating under section 7 a service that is primarily for consumption, use or enjoyment in Canada, is replaced with new paragraph 7(*a*.1). Difficulties have arisen in the determination of where certain services are primarily consumed, used or enjoyed. New paragraph 7(*a*.1) excludes from section 7 a supply of a service that is "rendered" to an individual while that individual is in Canada. Note that this applies whether or not the supply is "made" to an individual (i.e., whether an individual is the legal recipient within the meaning of subsection 123(1)). A supply may meet the condition in new paragraph 7(*a*) in that the service is not "supplied" to an individual who is in Canada. If, however, the service is "rendered" to an individual while the individual is in Canada, the supply would be excluded from zero-rating under section 7 by paragraph 7(*a*.1).

For example, where a non-resident company pays a fee for an employee to attend a management training session in Canada, the training service, although supplied to a non-resident person other than an individual, would not be zero-rated under section 7 because the service is rendered to the employee, an individual, while the employee is in Canada. It should be noted that, since section 7 is a general zero-rating provision for services, a more specific provision (e.g., section 18 of this Part) may apply in some cases.

This amendment applies to supplies for which all of the consideration becomes due or is paid without having become due on or after July 1, 1996.

Subclause 143(2)

Representatives' Services

ETA
Schedule VI, Part V, paragraph 7(*f*)

Section 7 zero-rates most supplies of services to non-resident persons. However, paragraph 7(*f*) excludes agents' services that are addressed under section 5 of Part V. This amendment is consequential to the amendment to section 5 with respect to services of arranging for, procuring or soliciting orders for supplies by or to a non-resident person (see commentary above). Amended paragraph 7(*f*) excludes these services from the application of section 7.

This amendment applies to supplies made after April 23, 1996.

Subclause 143(3)

Telecommunication Service

ETA
Schedule VI, Part V, paragraph 7(*h*)

Section 7 zero-rates most supplies of services to non-resident persons. However, new paragraph 7(*h*) excludes telecommunication services. The tax status of those services will depend on whether the supply of the service is, under new section 142.1, made in Canada (see commentary on subclause 7(1)) and on new section 22.1 of this Part, which zero-rates a supply of a telecommunication service made by a registrant who carries on a business of supplying such services to a non-resident person who is not a registrant and who also carries on a business of supplying telecommunication services (see commentary on clause 145).

This amendment applies to supplies made after April 23, 1996.

Clause 144

Goods Sold to Persons for Delivery Abroad

ETA
Schedule VI, Part V, section 12

Existing section 12 of Part V of Schedule VI zero-rates goods supplied to a recipient if the supplier mails the goods, or has a common carrier deliver the goods to that recipient, at an address outside Canada.

The amendment broadens the scope of this zero-rating provision by eliminating the requirement that the goods be delivered to the recipient, as opposed to any other person, at a place outside Canada. It will allow for the zero-rating of goods where the supplier delivers the property to a common carrier or mails the property, either to the recipient of the supply or to a third party, such as a non-resident relative of the recipient.

This amendment applies to supplies made after April 23, 1996.

Clause 144.1

Custodial or Nominee Services

ETA
Schedule VI, Part V, section 17

Existing section 17 of Part VI of Schedule VI zero-rates a supply made to a non-resident person of custodial or nominee services in respect of securities of the non-resident. The section is amended to also zero-rate such services supplied in respect of precious metals of a non-resident person. "Precious metal" is defined in subsection 123(1) of the Act.

This amendment applies to supplies made after 1996.

Clause 145

Postal Services and Telecommunication Services

ETA
Schedule VI, Part V, sections 22 and 22.1

Section 22 Postal Services

Existing section 22 of Part V of Schedule VI zero-rates a supply of a telecommunication or postal service made by a registrant who carries on a business of supplying such services to a non-resident person who is not a registrant and who also carries on a business of supplying such services. The amendment to section 22 removes references to telecommunication services, which are addressed in new section 22.1 of this Part.

The amendment applies to supplies made after April 23, 1996.

Section 22.1 Telecommunication Services

New section 22.1 of Part V of Schedule VI zero-rates a supply of a telecommunication service made by a registrant who carries on a business of supplying such services to a non-resident person who is not a registrant and who also carries on a business of supplying telecommunication services. "Telecommunication service" is newly defined in subsection 123(1) (see commentary on the definition of this term under clause 1).

The zero-rating provision does not include a supply of a telecommunication service where the telecommunication is emitted and received in Canada. For example, if an employee of a non-resident telecommunications carrier places a long-distance call from a place in Canada to another place in Canada and uses the non-resident employer's calling card, the Canadian telecommunications carrier would have to charge the non-resident tax on the call, which is deemed to be made in Canada under the rules in new section 142.1 (see commentary on clause 7).

The amendment applies to supplies made after April 23, 1996, and to supplies made on or before that day if the supply was not treated as taxable i.e., if the supplier did not charge tax or an amount was charged as tax and a refund of the amount was claimed in an application received at a Revenue Canada office before April 23, 1996 or a deduction under subsection 232(3) in respect of the amount was claimed in a return filed at a Revenue Canada office before that day.

Clause 146

Advisory, Professional or Consulting Services

ETA
Schedule VI, Part V, paragraph 23(*d*)

Section 23 of Part V of Schedule VI zero-rates certain supplies of advisory, professional or consulting services made to non-resident persons. However, paragraph 23(*d*) excludes agents' services, which are dealt with under section 5. This amendment is consequential to the amendment to section 5 with respect to services of arranging for, procuring or soliciting orders for supplies by or to a non-resident person (see commentary above). Amended paragraph 23(*d*) excludes these services from the application of section 23.

This amendment applies to supplies made after April 23, 1996.

Clause 147

International Flight

ETA
Schedule VI, Part VII, section 1

This amendment repeals the definition "international flight" in section 1 of Part VII of Schedule VI. It is replaced by the definition "international flight" in new subsection 180.1(1) (see commentary on clause 31).

This amendment is effective on April 24, 1996.

Clause 148

In-Flight Charges

ETA
Schedule VI, Part VII, section 5

This amendment provides that supplies to passengers of goods delivered or services performed on board an international flight while the flight is in Canada will no longer be zero-rated under Schedule VI. Nonetheless, these supplies remain non-taxable as the zero-rating provision is replaced by new subsection 180.1(2), which deems such supplies to be made outside Canada (see commentary on clause 31).

This amendment applies to supplies made after April 23, 1996.

Clause 149

International Air Ambulance Services

ETA
Schedule VI, Part VII, section 15

New section 15 of Part VII of Schedule VI zero-rates services provided by Canadian air ambulance operators operating in the U.S. and international markets. Under the existing legislation, ambulance services are exempt under section 4 of Part II of Schedule V. That section is amended to exclude international air ambulance services to maintain competitive equity between Canadian suppliers and foreign suppliers of air ambulance services, who do not have to pay GST on their inputs (see commentary on clause 93).

The amendment is effective January 1, 1991.

Clause 149.1

Non-taxable Importations

ETA
Schedule VII, section 4

Section 4 of Schedule VII describes goods that have been donated to a charity and are being imported by the charity. By virtue of being included in this Schedule, the goods are not subject to tax under Division III of Part IX of the Act.

Section 4 is amended, as of January 1, 1997, as a consequence of the amendment to the definition of "charity" in subsection 123(1) (see commentary on clause 1)). The amended definition excludes entities that are "public institutions" as newly defined in subsection 123(1) (see commentary on the definition "public institution" under clause 1). Specific reference to public institution is therefore added to section 4 to ensure that those entities continue to receive the benefit of relief from tax on imported goods that have been donated to them.

Part II

EXCISE TAX ACT

This Part contains amendments intended to implement the Harmonized Sales Tax (HST).

Clause 150

Definitions

ETA
123(1)

Subsection 123(1) contains definitions of terms used in Part IX of the Act. A number of those definitions are amended and certain definitions are added as a consequence of the introduction of the HST. These amendments to subsection 123(1) all come into force on April 1, 1997.

Subclause 150(1)

Application

The preamble in subsection 123(1) is amended to provide that the definitions in this subsection apply to new Schedules VIII to X, which relate to the HST.

Subclause 150(2)

"consideration fraction" and "tax fraction"

These definitions are repealed as a consequence of the introduction of the 15-per-cent tax rate in the participating provinces under the HST. The existing definitions of "consideration fraction" and "tax fraction" are based only on the 7-per-cent GST tax rate. References to these definitions in Part IX of the Act are replaced with references to the appropriate fraction that takes into account the provincial component of the HST wherever it is applicable.

Subclause 150(3)

"direct cost"

The "direct cost" of property or a service supplied by a person includes tax under Part IX that was payable by the supplier in respect of that property or service. This definition, as amended in subclause 1(12), is further amended to ensure that the "direct cost" of property that is subject to the HST upon being brought into a participating province by a supplies includes that tax as well. The definition of "direct cost" is relevant to certain exemptions under Parts V.1 and VI of Schedule V to the Act.

Subclause 150(4)

"residential complex"

This amendment to the definition "residential complex" is consequential to the addition of subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each lease interval period (see commentary on clause 155). The definition "residential complex" is amended to ensure that the reference therein to the period of continuous possession or use is a reference to such period as provided for under the arrangement to avoid confusion with the lease interval period in respect of each separate deemed supply.

Subclause 150(5)

"residential trailer park"

This amendment to the definition "residential trailer park" is consequential to the addition of subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each lease interval period (see commentary on clause 155). The definition "residential trailer park" is amended to ensure that the reference therein to the period of continuous possession or use is a reference to such period as provided for under the arrangement to avoid confusion with the lease interval period in respect of each separate deemed supply.

Subclause 150(6)

"basic tax content"

The "basic tax content" of a person's property is generally the amount of tax under Part IX that the person was required to pay on the property and improvements thereto, after deducting any amounts (other than input tax credits) that the person was entitled to recover by rebate, remission or otherwise and after taking into account any depreciation in the value of the property. The depreciation factor is generally calculated by dividing the fair market value of the property at the time the basic tax content is determined by the value on which the tax was originally calculated.

For example, if goods are purchased in a non-participating province for $1,000, GST of $70 will be payable. Immediately after the goods are purchased, they have a basic tax content of $70 if no rebates or remissions of tax are available. If the fair market value of the goods is $500 one year later, the basic tax content will be $35 at that time, because the goods have depreciated in value by one-half.

The value determined under this new definition applies after March 1997 in determining a person's liability for tax or eligibility for input tax credits in a number of cases where the person is deemed under Part IX to have supplied or acquired property. Basic tax content is most commonly used for purposes of the capital property rules set out in Subdivision d of Division II of Part IX, which allow a person to claim additional input tax credits where the person increases the use of capital property in commercial activities and recaptures the credits where the use in commercial activities decreases. Basic tax content is also used for purposes of various other deemed supplies and acquisitions, such as where a person becomes, or ceases to be, a registrant.

Before April 1997, the provisions of Part IX dealing with deemed supplies and acquisitions of capital personal property, for example, generally deem tax to have been collected or paid, as the case requires, equal to tax on the fair market value of the property calculated at the rate of tax applicable to the supply. However, using this method of calculating the deemed tax would lead to inappropriate results after March 1997 where the tax on the acquisition of the property or an improvement was calculated at a different rate than that applicable to the deemed supply.

For example, if a registrant purchases property for $200 in a participating province after March 1997 for use as capital property in non-commercial activities, HST of $30 will be payable. If the property is later removed to a non-participating province where the registrant begins to use the property exclusively in commercial activities, the registrant is deemed to have acquired the property in the non-participating province and would, under the pre-April 1997 capital property rules, be deemed to have paid tax at the 7-per-cent rate applicable to supplies made in that province. Assuming no change in the value of the property, the input tax credit available on the change in use would equal $14 (7 per cent of $200). The remaining tax of $16 would be unrecoverable. The amendments relating to basic tax content address this problem so that the tax consequences of a change in use will take into account all of the tax under Part IX that applied to the property regardless of where the property is situated when the deemed supply or acquisition occurs, subject to the adjustments for rebates and depreciation. In this example, the full $30 of HST would be recoverable as an input tax credit.

The basic tax content of property includes not only tax that was actually paid but also the tax that otherwise would have been payable when the property (or improvements to the property) was acquired or brought into a participating province if not for the fact that it was acquired or brought in for consumption, use or supply exclusively in the course of commercial activities.

Any part of the tax that is recoverable otherwise than as an input tax credit must be removed from the "basic tax content" calculation. Therefore, "basic tax content" of a particular property will not include any amount a person was entitled to recover, or would have been entitled to recover if the property had been acquired for use exclusively in activities that are not commercial activities, by way of a rebate (e.g. public service body rebates), refund (e.g. an amount of tax refunded due to an adjustment to consideration), remission or otherwise under this Act or any other Act or law. For example, if a charity that is a registrant acquires property for use exclusively in commercial activities, it may recover all of the tax payable on the acquisition by claiming an input tax credit and a rebate under section 259 is not available. Nevertheless, the basic tax content is calculated as if a rebate were available, calculated on the full amount of tax payable.

The method for calculating basic tax content varies where the property was brought into a participating province from a non-participating province. In this case, paragraph (*b*) of the definition applies. In all other cases (for example, property that was last acquired in a participating or a non-participating province, property that was imported into a participating or a non-participating province, etc.), paragraph (*a*) applies when determining the basic tax content.

For example, if property is purchased in a non-participating province for $10,000 and GST of $700 is payable on the purchase, the basic tax content of the property immediately after the purchase is $700. Assuming the property is for use exclusively in commercial activities, the registrant would be entitled to a $700 input tax credit. If the property is later brought into a participating province for use exclusively in commercial activities at a time when its fair market value is $5,000, under paragraph (*b*) of the definition, the basic tax content will now be the total of

- the basic tax content of the property immediately before the property was brought into the province, which in this example is $350 ($5,000/$10,000 x $700), plus
- the tax that would have been payable on bringing the property into the province if the property were for use in non-commercial activities, which in this example is $400 (8 per cent of $5,000).

Thus, the basic tax content will be $750. If the registrant ceases using the property in commercial activities soon after it is brought in, the registrant would be required to pay tax under the capital property change-in-use rules equal to the basic tax content of $750.

The 8 per cent portion of the HST is deducted in calculating the basic tax content of property of a selected listed financial institution that is required to use the special attribution method in new section 225.2 of the Act. However, these financial institutions are required to add an amount in calculating basic tax content, generally equal to 8/7ths of the GST applicable to the purchase of the property or improvement multiplied by the institution's total prescribed percentage under section 225.2 for the taxation year in which the GST became payable.

For example, if a selected listed financial institution acquires a machine for $100,000 plus $15,000 of HST in a taxation year for which its total prescribed percentage (for the purposes of the special attribution method) for the participating provinces is 10 per cent, its basic tax content for the machine will be $7,800, calculated as follows:

- $15,000, being the tax that was payable on the acquisition; plus
- $800, being 8/7ths of 10 per cent of the $7,000 of GST that was payable on the acquisition; less
- $8,000, being the provincial component of the HST payable on the acquisition.

"non-participating province"

The new definition "non-participating province" is relevant for purposes of the HST. "Non-participating province" is defined to mean a province or area of Canada that is not a participating province. "Participating province" is newly defined in subsection 123(1) and refers to a province listed in new Schedule VIII to the Act. For purposes of Part IX of the Act, the term "non-participating province" refers to the provinces not specified in Schedule VIII, as well as other areas of Canada that are not in a province, such as some off-shore areas.

"participating province"

The new definition "participating province" is relevant for purposes of the HST, particularly the rules for determining whether a supply is made in or outside a participating province. "Participating province" is defined to mean a province referred to in new Schedule VIII. The participating provinces are Nova Scotia, New Brunswick and Newfoundland. Reference may also be made to the commentary on the new definition "tax rate" in subsection 123(1) and the commentary on new Schedule VIII.

"selected listed
financial institution"

The definition "selected listed financial institution" is added to subsection 123(1). Such an institution is a type of "listed financial institution", which is already defined in subsection 123(1). A "selected listed financial institution" is defined as a listed financial institution that meets the criteria set out in new subsection 225.2(1). This definition is relevant for the purposes of new rules that apply to listed financial institutions that will be required to use the special attribution method provided under that subsection to determine their net tax. The definition is also relevant to new section 218.1 and Subdivisions "a" and "b" of new Division IV.1.

"specified motor vehicle"

The new definition "specified motor vehicle" is relevant for purposes of the HST. Special rules apply for purposes of determining the time of payment of the provincial component of the HST on these vehicles as well as the value on which that tax is calculated. Paragraph (*a*) of the definition enumerates a number of tariff items under Schedule I to the *Customs Tariff*. Goods that are, or would be if they were imported, classified under these tariff items (other than racing cars classified under heading no. 87.03 and any prescribed motor vehicles) are defined as specified motor vehicles. Paragraph (*b*) of the definition provides for any other motor vehicles that may be prescribed.

"tax rate"

The new definition "tax rate" is relevant for purposes of the imposition of the HST in the participating provinces. The definition provides that the tax rate for, or in relation to, a participating province means the rate set opposite the name of the province in new Schedule VIII (see commentary relating to Schedule VIII). "Participating province" is newly defined in subsection 123(1). The tax rate in each of the participating provinces is 8 per cent. Reference may also be made to the commentary on new subsection 165(2), which imposes the provincial component of the HST on taxable supplies made in the participating provinces.

Subclause 150(7)

Application of Provisions to Schedules

ETA
123(4)

Subsection 123(4) is amended to ensure that any provision that applies for purposes of Part IX of the Act also applies for purposes of new Schedules VIII to X, which relate to the HST.

Clause 151

Becoming a Small Supplier Division

ETA
129(6)

Subsection 129(6) applies when a branch or division of a public service body that is a registrant becomes a "small supplier division" (within the meaning of section 129) although the public service body remains a registrant. This provision ensures that the input tax credits previously claimed by the body in respect of the activities of the small supplier divisions are, in effect, recaptured since the division's supplies will no longer be taxable. It requires the body to self-assess and remit tax equal to the total of all input tax credits the body was entitled to claim in respect of non-capital property that the body holds for consumption, use or supply primarily in the course of activities engaged in by the body through its small supplier divisions.

The amendment provides that the amount of tax the body is required to self-assess will equal the "basic tax content" of the property immediately before the branch or division became a small supplier division. "Basic tax content" of property is newly defined in subsection 123(1) and is used throughout the change-in-use provisions pertaining to capital property (see commentary on subclause 150(6)).

This amendment applies to supplies made on or after April 1, 1997.

Clause 152

Small Supplier Divisions

ETA
129.1

Subclause 152(1)

Restriction on Input Tax Credits for Purchases

ETA
129.1(2)(*a*)

This provision currently restricts a public service body from claiming input tax credits with respect to any tax paid or payable for property of the body (other than capital property or improvements thereto) acquired or imported for consumption, use or supply in the course of activities engaged in by a small supplier division of the body.

The amendment adds the words "brought into a participating province", thus also restricting input tax credits with respect to the provincial component of the HST paid or payable in respect of property of the body (other than capital property or improvements thereto) brought into a participating province for consumption, use or supply in the course of activities engaged in by a small supplier division of the body.

This amendment is effective on April 1, 1997

Subclause 152(2)

Restriction on Input Tax Credits for Leases

ETA
129.1(3)

This subsection restricts a public service body from claiming input tax credits for tax paid or payable on lease payments for a period (referred to as a "lease interval") during which the leased property is used by a small supplier division of the body.

Subsection 129.1(3) is repealed as it is no longer necessary due to the fact that new subsection 136.1(1) deems a separate supply to be made (and therefore a separate acquisition by the body) of the property for each lease interval. As a result, the input tax credit entitlement of the body will be determined separately for each lease interval. The input tax credit will be denied if the property is for use in a small supplier division during the lease interval by virtue of paragraph 129.1(2)(*a*).

This amendment is effective on April 1, 1997.

Subclause 152(3)

Change In Use of Non-capital Property

ETA
129.1(4)

Subsection 129.1(4) sets out further rules for public service bodies who hold non-capital property for consumption, use or supply in the course of activities engaged in by the body through its small supplier divisions. It generally requires the body to self-assess and remit tax equal to the total of all input tax credits the body was entitled to claim in respect of non-capital property that the body was holding for use in commercial activities but otherwise than primarily for use in activities of its small supplier divisions and that the body begins to hold primarily for use in activities of those divisions.

The amendment provides that the amount of tax the body is required to self-assess is equal to the basic tax content of the property immediately before the time the change in use occurs. "Basic tax content" is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

This amendment applies to supplies made on or after April 1, 1997.

Subclause 152(4)

Change in Use of Non-capital Property

ETA
129.1(5)

This provision is essentially the corollary to the change-in-use rule in subsection 129.1(4). The purpose of this provision is to allow a public service body to claim an input tax credit where the body was holding non-capital property for consumption, use or supply primarily in the course of activities engaged in by the body through its small supplier divisions and begins to hold the property for consumption, use or supply primarily in the course of activities engaged in otherwise than through its small supplier divisions. Also, to qualify for input tax credits, the body must hold the property for consumption, use or supply in the course of commercial activities.

The amendment provides that the amount of tax the body is entitled to claim as input tax credits will be determined with reference to the basic tax content of the property at the time the change in use occurs. Specifically, the amount of tax deemed to have been paid in respect of the deemed acquisition of the property by the body equals the basic tax content multiplied by the extent (expressed as a percentage) to which the property was held by the body for consumption, use or supply in the course of activities engaged in by the body through its small supplier divisions. "Basic tax content" is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

This amendment applies to supplies received on or after April 1, 1997.

Clause 153

Residence

ETA
132.1

The residence of a person is relevant to a number of provisions relating to the HST. For example, a consumer that is resident in a participating province is generally not eligible for a rebate of the provincial component of the HST paid on goods removed from a participating province to a non-participating province (an exception is made for specified motor vehicles (as newly defined in subsection 123(1)) removed from the participating provinces). Also, the self-assessment rules for services and intangible personal property acquired in a non-participating province for consumption or use primarily in a participating province require a determination of residence of the recipient.

Section 132 deals with the question of residence for HST purposes. The determination of residence ordinarily depends on general legal principles. However, new section 132.1 sets out certain special rules for particular circumstances.

Subsection 132.1(1) Person Resident in a Province

New subsection 132.1(1) sets out rules to determine, for purposes of Part IX of the Act, the residence of certain categories of persons. Subsection 132.1(1) does not apply for the purposes of determining the residence of an individual in the individual's capacity as a consumer. For example, it does not apply for the purpose of determining the individual's eligibility for the rebate for the provincial component of the HST on goods removed from a participating province.

A corporation is treated as being resident in a province if it is resident in Canada and incorporated or continued under the laws of that province and not continued elsewhere. A partnership or other unincorporated body is resident in a province if it is resident in Canada and the member or a majority of the members having management and control of the partnership is or are resident in that province. In the case of a labour union, the union is resident in a province if it is resident in Canada and carrying on activities as a union in that province and has a local union or branch in that province. In any case, a person is regarded as resident in a province if the person has a permanent establishment in that province. "Permanent establishment" is defined, for purposes of this section and Schedule IX, in subsection 132.1(2).

Subsection 132.1(2) Meaning of "permanent establishment"

In addition to its implications for purposes of determining a person's residence, whether a supplier has a permanent establishment in a province could impact on where a supply is considered to be made for HST purposes. Depending on the province in which the supply is made, the supplier may be required to collect either the GST or the HST. For example, if a service is performed in more than one province, including a participating province, the place of supply of the service may depend on the place of negotiation of the supply. "Place of negotiation" of the supply is defined in section 1 of Part I of Schedule IX in terms of the location of the supplier's permanent establishment.

New subsection 132.1(2) defines "permanent establishment" for purposes of subsection 132(1) and Schedule IX. In the case of an individual, the estate of a deceased individual or a trust that carries on a business, "permanent establishment" has the same meaning as for purposes of Part XXVI of the *Income Tax Regulations*. In the case of a corporation that carries on a business, "permanent establishment" has the same meaning as for purposes of Part IV of those Regulations.

Paragraph 132.1(2)(*c*) sets out the rules for partnerships. "Permanent establishment" of a partnership includes a permanent establishment, as defined for purposes of Part XXVI of the *Income Tax Regulations*, of a member that is an individual, the estate of a deceased individual or a trust, where the establishment relates to a business carried on through the partnership. "Permanent establishment" of a partnership also includes a permanent establishment, as defined for purposes of Part IV of the *Income Tax Regulations*, of a member that is a corporation where the establishment relates to a business carried on by the partnership. In addition, "permanent establishment" of a particular partnership also includes a permanent establishment, as defined in this section, of a member that is itself a partnership where the establishment relates to a business carried on by the particular partnership. Paragraph 132.1(2)(*d*) provides that, in any case not covered by paragraphs 132.1(2)(*a*) to (*c*), the term "permanent establishment" is to be given the same meaning as would be assigned for purposes of Part IV of the *Income Tax Regulations* if the person were a corporation and its activities were a business for purposes of the *Income Tax Act*. Finally, an office for the purchase of merchandise is considered a permanent establishment.

For purposes of subsection 132.1(2), "business" has the meaning assigned by subsection 248(1) of the *Income Tax Act*.

The definition "permanent establishment" applies as of April 1, 1997.

Clause 154

Combined Lease of Real Property

ETA
136(2.1)

This subsection is repealed as a consequence of the addition of new subsection 136.1(1), which provides the same rule with respect to leased property in general, namely that a separate supply of the property is deemed to be made for each period (referred to as a "lease interval") to which a lease payment is attributable.

This amendment is effective April 1, 1997.

Clause 155

Separate Supplies

ETA
136.1 to 136.4

Subsection 136.1(1) Lease, etc. of Property

New subsection 136.1(1) provides that supplies of property by way of lease, licence or similar arrangement will be treated as a series of separate supplies for each period (referred to as a "lease interval") to which a particular lease payment is attributable. For each lease interval, the supplier is deemed to have made, and the recipient is deemed to have received, a separate supply of the property on the earliest of the first day of the lease interval, the day on which the payment for that interval becomes due, and the day on which the payment attributable to the lease interval is paid. This new subsection is particularly relevant for purposes of the place of supply rules set out in new Schedule IX in order to determine the appropriate amount of tax applicable to each separate lease payment.

This amendment applies to lease intervals that begin on or after April 1, 1997.

Subsection 136.1(2) Ongoing Services

New subsection 136.1(2) provides that supplies of services will be treated as a series of separate supplies for each period (referred to as a "billing period") to which a particular payment is attributable. For each billing period, the supplier is deemed to have made, and the recipient is deemed to have received, a separate supply of the service on the earliest of the first day of the billing period, the day on which the payment attributable to the billing period becomes due and the day on which the payment attributable to the period is made. This new subsection is particularly relevant for purposes of the place of supply rules set out in new Schedule IX in order to determine the appropriate amount of tax applicable to each payment.

This amendment applies to billing periods that begin on or after April 1, 1997.

Section 136.2 Supply of Real Property Partly Outside a Province

Section 1 of Part IV of new Schedule IX (place of supply rules) provides that a supply of real property is made in a province if the property is situated in the province. However, a single supply may be made of real property that is situated in a participating province and real property that is situated in a non-participating province or outside Canada. New section 136.2 is intended to deal with this situation for purposes of determining where in Canada the supply is made and the portion of the consideration subject to the 7-per-cent GST rate or the 15-per-cent HST rate.

In these circumstances, section 136.2 results in the provision of the real property situated in a particular province being regarded as a separate taxable supply from the provision of the real property situated in another province or outside Canada. Also, the separate taxable supplies are deemed to be made for separate consideration equal to the proportion of the total consideration reasonably attributable to each part of the real property.

Whether a supply of real property is made in or outside Canada for purposes of subsection 165(1) is determined under section 142.

This section is effective April 1, 1997.

Section 136.3 Separate Supplies of Freight Transportation Services

Section 5 of Part VI of new Schedule IX sets out the place of supply rules for a supply of a freight transportation service. Specifically, a supply of a freight transportation service is regarded as made in a participating province if the destination of the freight transportation service is in a participating province.

For this purpose, "freight transportation service" has the same meaning as in section 1 of Part VII of Schedule VI but does not include a supply of a service described in Part VII of Schedule IX (i.e., postage).

New section 136.3 addresses the situation where a supply of a freight transportation service includes the provision of the service of transporting tangible personal property to a destination in a participating province and other property to a destination in a non-participating province. In such a case, the provision of the service of transporting the property to a destination in a participating province and the provision of the service of transporting property to a non-participating province are each deemed to be separate supplies made for separate consideration equal to the portion of the total consideration that is reasonably attributable to the respective parts of the entire transportation service.

This section is effective April 1, 1997.

Section 136.4 Telecommunications Channel

Section 3 of Part VIII of new Schedule IX provides that a supply of a service of granting sole access to a telecommunications channel is made in a province based on the rules set out in new section 136.4.

"Telecommunications channel" is defined in subsection 136.4(1) to mean a telecommunications circuit, line, frequency, channel, partial channel or other means of sending or receiving a telecommunication but does not include a satellite channel.

Subsection 136.4(2) provides that a person making a supply of a service of granting sole access to a telecommunications channel for transmitting telecommunications between two provinces is deemed to have made separate supplies. The supplier is deemed to have made a separate supply of the service in each of those two provinces as well as in any other provinces between the two provinces. The consideration for the deemed supply in each province is calculated based on the proportional distance over which the telecommunication would be transmitted in the province if the telecommunication were transmitted solely by means of cable and related telecommunications facilities located in Canada that connected, in a direct line, the transmitters for emitting and receiving the telecommunications.

This section is effective April 1, 1997

Clause 156

Intended Use in Commercial or Other Activities

ETA
141

The amendments under this clause add a reference to property brought into a participating province to the amended provisions which currently refer only to property acquired or imported. The added reference is necessary as the bringing in of property into a participating province is another occurrence that may trigger the application of tax under the HST (see new section 220.05) and therefore the necessity to ascertain the purpose for which the property is brought into the participating province to determine a person's input tax credit entitlement in respect of the tax.

These amendments are effective April 1, 1997.

Clause 157

Acquisition for Purpose of Making Supplies, etc.

ETA
141.01(2), (4) and (5)

The amendments under this clause add a reference to property brought into a participating province to the amended provisions which currently refer only to property acquired or imported. The added reference is necessary as the bringing in of property into a participating province is another occurrence that may result in tax becoming payable under the HST (see new section 220.05) and therefore the necessity to ascertain the purpose for which the property is brought into the participating province to determine a person's input tax credit entitlement in respect of the tax.

These amendments are effective April 1, 1997.

Clause 158

Disposition of Personal Property, Inventory, etc.

ETA
141.1(1) and (2)

The amendments under this clause add a reference to property brought into a participating province to the amended provisions which currently refer only to property acquired or imported. The added reference is necessary as the bringing in of property into a participating province is another occurrence that may trigger the application of tax under the HST (see new section 220.05) and therefore the necessity to ascertain the purpose for which the property is brought into the participating province to determine a person's input tax credit entitlement in respect of the tax.

These amendments are effective April 1, 1997.

Clause 159

Supply in a Province

ETA
144.1

A taxable supply (other than a zero-rated supply) made in a participating province is subject to tax at the 15-per-cent HST rate, whereas a taxable supply made in a non-participating province is subject to tax at the 7-per-cent GST rate. As a result, special rules are required to determine when a supply is made in or outside a participating province. Section 144.1 provides that, for purposes of Part IX of the Act, a supply is deemed to be made in a province if it is made in Canada and is, under the rules set out in Schedule IX, made in that province. However, if the supply is not made in Canada or the rules in Schedule IX do not apply to deem the supply to be made in a province, the supply is deemed to be made outside that province. Further, a supply made in Canada that is not made in a participating province is deemed to be made in a non-participating province. "Participating province" and "non-participating province" are newly defined in subsection 123(1) (see commentary on clause 150).

Section 144.1 comes into force on April 1, 1997.

Clause 160

Consideration for Portions of Tour Packages

ETA
163

Section 163 sets out the rules for determining the consideration for the taxable portion of a tour package. This section is amended in order to reflect circumstances where some or all of the elements included in the tour package are supplied in a province that is a participating province under the HST.

Generally, the term "tour package" refers to a combination of two or more services or of property and services that may include transportation, accommodation and other travel services that are provided to a recipient at an all-inclusive price. Certain elements of a tour package can attract tax at the 7-per-cent GST rate or at the 15-per-cent HST rate. Furthermore, some elements such as accommodation provided outside Canada are outside the scope of the sales tax.

The taxable portion of a tour package includes the costs of tour package those services that are taxable at the 7-per-cent GST rate if the provision of the element is in a non participating province or at the 15-per-cent HST rate if the provision of the element is in a participating province. Examples of taxable services are domestic transportation services, accommodation, entertainment, meals, and other supplies made in Canada.

The zero-rated portion of a tour package includes such property and services as international transportation services and accommodation, meals, entertainment, and other services supplied outside Canada.

Tour operators selling tours involving a combination of taxable and zero-rated travel services are required to prorate the selling price of the tour package according to the value of the taxable and zero-rated elements in the package. The prorating is based on the relative tax-excluded cost of each element to the tour operator. Prorating is required only once in respect of any given tour package. Thereafter, the taxable portion of that tour package will be a fixed percentage of the selling price as long as the mixture of input travel costs does not change significantly.

Subsection 163(1) establishes the value for tax of a tour package sold by the first supplier of the package. In some cases, tour operators act as wholesalers and sell tour packages to travel retailers who, in turn, sell the packages to final consumers. If the retailer paid tax on, for example, 35 per cent of the total price of the tour package, then the retailer in turn would charge tax to its customers on 35 per cent of the price paid by the customer. Subsection 163(1) is amended to provide for separate calculations in respect of the "provincially taxable portion" (which is subject to the 15-per-cent HST rate) and the "non-provincially taxable portion" of the tour package (which is subject to the 7-per-cent GST rate). The latter terms and the additional factors necessary to the determination of consideration under subsection 163(1), namely the "taxable percentage", "base percentage", and "initially taxable percentage" are defined in amended subsection 163(3).

New subsection 163(2.2) provides a transitional provision in the circumstances where a supply of a provincially taxable portion of a tour package is made by, say, a travel service retailer who acquired the tour package from the first supplier of the tour package and was not required to pay tax at the 15-per-cent HST rate due to the fact that the tour package was acquired prior to the implementation of HST. Subsection 163(2.2) deems the travel service retailer to be the first supplier for the purposes of determining the tax on the provincially and the non-provincially taxable portion of the tour package.

New subsection 163(2.1) deems the provision of the taxable portion of a tour package that is the provincially taxable portion of the package to be a supply made in a participating province that is separate from and not incidental to the other parts, if any, of the tour package. For the purposes of calculating the provincially taxable portion of the other parts of the tour package, those parts are deemed to be supplied outside the participating province.

Subsection 163(3) defines the term "provincially taxable portion" of a tour package, in respect of a participating province, as all the property and services in the tour package that, if purchased separately and not as part of a tour package, would be made in the participating province and subject to tax at the 15-per-cent HST rate.

As noted above, the definitions of the various percentages relevant to establishing the portion of the sale price that is taxable at 15 per cent and 7 per cent are also amended to apply in respect of each of the provincially taxable portions of the tour package and the non-provincially taxable portion of the tour package.

These amendments apply to tour packages that are supplied for consideration that becomes due on or after April 1, 1997 or is paid on or after that day without having become due.

Clause 161

Imposition of Tax under Division II of Part IX

ETA
165, 165.1, 165.2

Section 165 Charging Provision

Section 165 imposes the tax under Part IX of the Act on supplies made in Canada. This section is amended to impose, under new subsection 165(2), the provincial component of the HST on supplies made in a participating province. Subsection 165(2) is renumbered as subsection 165(3).

These amendments come into force on April 1, 1997. However, reference should be made to the application and transition rules under new section 349 to determine to which supplies new subsection 165(2) applies.

Subsection 165.1(1) Pay Telephones

Existing subsection 165(3) is renumbered as subsection 165.1(1). It provides rules for calculating the amount of tax payable for the supply of a telecommunication service where the consideration for that supply is paid by depositing coins in a coin-operated telephone.

The subsection is amended to make reference to the provincial component of the HST imposed under new subsection 165(2). Under these rules, the tax payable for the supply is zero where the amount deposited for the supply does not exceed 25 cents. In any other case, the tax is rounded to the nearest 5 cents where the total tax, determined in accordance with subsections 165(1) and (2), is 5 cents or more.

The amendment comes into force on April 1, 1997.

Subsection 165.1(2) Coin-operated Devices

Subclause 17(2) adds new subsection 165(3.1) applicable to supplies made after April 23, 1996 through the use of certain coin-operated devices.

That subsection applies to goods dispensed from, or services rendered through the operation of, such a device that is designed to accept only a single coin of 25 cents or less as the total consideration for the supply. The effect of the subsection is that the GST on such supplies is equal to zero, since 7 per cent of 25 cents is less than 2.5 cents.

Effective April 1, 1997, that subsection is renumbered, under subclause 161(1), as subsection 165.1(2) and further wording changes are made as a consequence of the introduction of tax at the 15-per-cent HST rate in the participating provinces. The result is still that the tax is zero when the total consideration for such supplies is a single coin of 25 cents or less.

Subsection 165.2(1) Fractional Amounts

Existing subsection 165(4) is renumbered as subsection 165.2(1). This subsection sets out a rounding rule for determining the total sales tax payable in respect of supplies for which a single invoice is issued. Wording changes have been made so that the subsection refers to tax under both subsections 165(1) and (2).

This change is effective April 1, 1997.

Subsection 165.2(2) Exception to Rounding Rule

New subsection 165.2(2) provides for an exception to the rounding rule under subsection 165.2(1) in the case where the supplier is pricing on a tax-inclusive basis.

The new subsection comes into force on April 1, 1997.

Clause 162

Input Tax Credits

ETA
169

Subclause 162(1)

General Rule for Credits and Improvements

ETA
169(1) and (1.1)

Subsection 169(1) General Rule for Credits

Subsection 169(1) sets out the general rules for determining an input tax credit of a person in respect of property or a service. The existing subsection refers only to property or a service "supplied to or imported by" the person. The subsection is amended to also make reference to property brought into a participating province (as newly defined in subsection 123(1)) since that is another occurrence that could result in tax becoming payable by the person (under new Division IV.1) for which an input tax credit would be sought (see commentary on clause 205).

Subsection 169(1) is also restructured to define "an" input tax credit in respect of property or a service for a reporting period instead of "the" input tax credit, to take account of the possibility that a person might have more than one input tax credit in respect of the same property for the same reporting period. This could occur, for example, if tax became payable in the period both on the purchase of the property and upon bringing the property into a participating province. Tax might also become payable with respect to more than one deemed acquisition of the property under new section 136.1, which deems a separate supply by way of lease, licence or similar arrangement for each lease interval (as defined in that section) that falls in the reporting period. The registrant might not be entitled to an input tax credit to the same extent with respect to each of these amounts of tax that become payable at different times in the same reporting period since, from one time to the next, the intended use of the property or service might change. For that reason, the formula under subsection 169(1) applies separately to each amount of tax that becomes payable with respect to each taxable event – an acquisition, an importation or a bringing in of the property.

Subsection 169(1.1) Determining Credit for Improvement

Subsection 169(1.1), like subsection 169(1), is amended to make reference to property brought into a province that is a participating province under the HST since that is another occurrence that could result in tax becoming payable for which an input tax credit would be sought.

Further wording changes are made in paragraph (1.1)(*a*). Under the existing paragraph, where a registrant acquires property that is only in part for use in improving capital property of the registrant, the supply to the registrant of the property is treated as two separate supplies – a supply of that part of the property that is for use as an improvement and a supply of the remaining part of the property. This makes it possible to apply the special input tax credit rules with respect to improvements to the portion of the tax payable on the acquisition of the property that is attributable to the separate deemed acquisition of the part that will be used as an improvement. However, the rule deeming separate supplies to have been made does not deal with the case where tax becomes payable on the property not as a result of a supply being made to the registrant but rather as a result of the registrant bringing the property into a participating province.

The wording of the paragraph is amended to simply deem the property to be two separate properties rather than the supply of it to be two separate supplies. The effect is exactly the same. The rules for calculating input tax credits in respect of improvements apply only to the tax attributable to the part of the property that is for use as an improvement. For greater certainty, it is specified that this deeming overrides section 138, which would provide for the opposite result in some cases.

These amendments come into force on April 1, 1997.

Subclause 162(2)

Determining Credit for Leased Property and Ongoing Services

ETA
169(1.2) and (1.3)

These subsections are repealed since they are no longer necessary as a consequence of new sections 136.1 and 136.2, which deem a separate supply and acquisition to be made for each period (referred to as a "lease interval" in the case of a supply of property and a "billing period" in the case of a supply of a service) to which a payment is attributable. Subsection 169(1) then applies to each deemed acquisition.

This amendment applies as of April 1, 1997.

Subclause 162(3)

Restricted Credit for Selected Listed Financial Institutions

ETA
169(3)

New subsection 169(3) restricts the ability of a selected listed financial institution (as defined in new subsection 225.2(1)) to claim input tax credits in respect of the provincial component of the HST. These institutions determine their net tax in accordance with new subsection 225.2(2) under which the amount of provincial component of the HST to be recovered (or additional amount to be paid in some cases) is determined based on the unrecoverable amount of GST payable (or 7-per-cent component of the HST) and is taken into account as a special adjustment to net tax.

The restriction on input tax credits does not, however, apply where tax equal to the "basic tax content" of property (as newly defined in subsection 123(1)) is deemed to have been paid on a deemed acquisition of the property (see commentary on the definition "basic tax content" under subclause 150(6)). For example, tax equal to the basic tax content is deemed to have been paid under many of the amended capital property change-in-use rules, as well as other provisions of Part IX. The basic tax content of property may include tax that was calculated at the 7-per-cent GST rate and tax calculated at the 15-per-cent HST rate. Since it would be difficult to separate out the provincial component of the HST from the basic tax content, the financial institution may claim its input tax credits in these cases on the basis of the amount of tax deemed to have been paid. To reflect this, this deemed tax does not factor into the calculation of the special net tax adjustment under subsection 225.2(2).

New subsection 169(3) comes into force on April 1, 1997.

Subclause 163(4) Required Reporting

Paragraph 169(4)(*b*), as amended by subclause 19(1), provides that where a registrant is required to account for tax on the purchase of real property in a return, the registrant cannot claim an input tax credit for that tax unless the registrant has so accounted for the tax. The paragraph is further amended to apply to tax on any property or service that a registrant is required to report in a return. This would then encompass the self-assessed tax under new Division IV.1.

This amendment comes into force on April 1, 1997.

Clause 163

Restriction on Claiming Input Tax Credits

ETA
170(1)(*a*.1) and (*b*), 170(2)

The provisions that are amended by this clause restrict a registrant's ability to claim input tax credits for tax payable upon the acquisition or importation of certain property and services. These provisions are amended to add references to property brought into a participating province because that is another event that could result in tax becoming payable for which an input tax credit would be sought.

This amendment is effective on April 1, 1997.

Clause 164

Person Becoming a Registrant

ETA
171(1)(*b*)

When a person who is a small supplier becomes a registrant, subsection 171(1) deems the person to have received a supply by way of sale, and to have paid tax, on all property that the person is holding at that time for consumption, use or supply in the course of commercial activities. This is to allow the registrant to claim input tax credits for tax that was previously unrecoverable. Generally, the tax the person is deemed to have paid is equal to the lesser of the tax that became payable or was paid before the person became a registrant and the fair market value of the property at the time the person becomes a registrant. If the person was entitled to claim a rebate under section 259, that rebates is also taker into account.

The formula in existing paragraph 171(1)(*b*) would not always yield the correct result in the context of the HST since the tax originally paid might have been calculated at a different rate than the tax on the fair market value at a later time if the property had been moved from a non-participating province to a participating province or vice versa. The formula under existing paragraph 171(1)(*b*) is repealed and the paragraph is amended to provide that the amount of tax deemed to have been paid is equal to the "basic tax context" of the property, which is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

The "basic tax content" of property is based on the total of all tax paid less the total of such tax that was recovered by way of rebate or remissions. This difference is multiplied by a factor that, in essence, represents the change in the value of the property since the tax was last paid.

This amendment comes into force on April 1, 1997.

Clause 165

Taxi Businesses

ETA
171.1

Subclause 165(1)

Becoming a Registrant for Other Activities

ETA
171.1(2)(*a*)

Under subsection 240(1.1) every small supplier who carries on a taxi business is required to be registered in respect of that business. If the person is also engaged in other activities, under subsection 240(3.1) the person may apply to have the registration apply to all other commercial activities engaged in by the person. Where the person becomes a registrant in respect of those other commercial activities, the person is deemed to have received a supply way of sale of, and to have paid tax on, all non-capital property that the person held immediately before that time for consumption, use or supply in the course of commercial activities. This is to allow the registrant to claim input tax credits for tax that was previously unrecoverable. Generally, the tax the person is deemed to have paid is equal to the lesser of the tax that became payable or was paid before that time and the fair market value of the property at that time.

The rule under existing paragraph 171.1(2)(*a*) for determining the amount of tax deemed to have been paid by the registrant does not give the appropriate result in all cases in the context of the HST, such as where the registrant's activities are carried on in a participating province and the tax originally paid on the property deemed to have been acquired was calculated at the 15-per-cent HST rate while the deemed acquisition occurs in a non-participating province to which the property was subsequently removed where the 7-per-cent GST rate applies.

Therefore, the paragraph is amended to instead deem the amount of tax paid to be equal to the basic tax content of the property, which is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

Subclauses 165(2) to (4)

ETA
171.1(2)(*b*)(i) and 171.1(3)(*b*) and (*c*)

The word "imported" is deleted from these amended provisions as the reference to services "acquired" in the context of these provisions encompasses a service that has been imported.

This amendment is effective on April 1, 1997.

Clause 166

Taxable Benefits

ETA
173

Section 173 sets out the rules for determining the amount of tax to be remitted on a supply by a registrant to an employee or shareholder of the registrant when that supply gives rise to a taxable benefit for income tax purposes.

Subclauses 166(1) and (2)

ETA
173(1)(*c*) and (*d*)(i)

Paragraph 173(1)(*c*) addresses situations where property is provided but not sold by a registrant to an employee or shareholder. The existing paragraph deems the registrant to have acquired or imported the property for use in commercial activities to the extent it was acquired or imported for the purpose of making the supply to the employee or shareholder. This has the effect, among other things, of ensuring that the registrant may claim input tax credits to the same extent in respect of the tax payable on the acquisition or importation, subject to any other restrictions that might apply. The paragraph is amended to also refer to the situation where the property is brought into a participating province for the benefit of the employee or shareholder since that is another event that could result in tax becoming payable (under new Division IV.1) in respect of the property.

For the same reason, subparagraph 173(1)(*d*)(i) is amended to make reference to property being brought into a participating province. In this case, this ensures that where the registrant was prevented under section 170 from claiming an input tax credit for the tax payable upon bringing the property into the province, the registrant is not required to remit tax on the employee or shareholder benefit.

These provisions come into force on April 1, 1997.

Subclauses 166(3) and (4)

ETA
173(1)(*d*)(ii)(B) and (1)(*d*)(iv) of the French version

These amendments to the French version of the Act parallel those made to corresponding clause 173(1)(*d*)(vi)(B) and subparagraph 173(1)(*d*)(i) of the English version.

These amendments come into force on April 1, 1997.

Subclause 166(5)

ETA
173(1)(*d*)(vi)(B)

New subparagraph 173(1)(*d*)(vi), as enacted by subclause 22(1), provides that the calculation of the tax to be remitted on a taxable employee or shareholder benefit is based on the GST- and PST-included total benefit reported for income tax purposes. Subclause 166(5) further amends this provision to take into account the differing tax rates in participating and non-participating provinces.

Where the recipient is a shareholder who is resident in a participating province at the end of the taxation year or where the recipient is an employee and the last establishment of the employer at which the employee ordinarily worked or to which the employee ordinarily reported in the year was located in a participating province, the benefit is to be calculated by multiplying the total consideration for the benefit by the fraction 14/114. In any other case, the total consideration is multiplied by the fraction 6/106.

This amendment applies to the 1997 and subsequent taxation years of individuals, except that for the 1997 taxation year, 75 per cent of the tax rate for the participating provinces is used to calculate the HST to be remitted on the taxable benefit where applicable. As a result, in respect of the 1997 taxation year, instead of the fraction 14/114, the fraction 12/112 will be used.

Subclause 166(6)

ETA
173(3)(*c*)(i)

Paragraph 173(3)(*c*) disallows a registrant that is a financial institution from claiming an input tax credit, or recaptures an input tax credit previously claimed, in respect of tax payable on a vehicle or aircraft in respect of which the registrant has made an election under subsection 173(2) provided the vehicle or aircraft was last supplied by way of sale to the registrant and the cost to the registrant did not exceed $50,000. The amendment to subparagraph 173(3)(*c*)(i) provides for a similar denial or recapture of an input tax credit in these circumstances for tax payable upon the vehicle or aircraft being brought into a participating province.

The provision comes into force on April 1, 1997.

Subclause 166(7)

ETA
173(3)(*d*)

Existing paragraph 173(3)(*d*) disallows input tax credits in respect of tax payable upon the acquisition or importation of property or services for consumption or use in operating a vehicle in respect of which an election has been made under subsection 173(2). The amendment to paragraph 173(3)(*d*) also denies input tax credits for tax payable upon bringing any property into a participating province for consumption or use in operating the vehicle.

This amendment comes into force on April 1, 1997.

Clause 167

Travel and Other Allowances

ETA
174(*f*)

By virtue of section 174, a person who is an employer, partnership or charity may claim an input tax credit or rebate in respect of allowances paid for certain expenses to the same extent as would have been the case if the person had incurred the expense directly. Paragraph 174(*f*) clarifies that the time at which the person is considered to have paid tax in respect of the supply is the time at which the allowance is paid and that the amount of tax deemed to have been paid by the employer, partnership or charity is equal to the tax fraction of the allowance. The proposed amendments recognize that the expenses may have been subject to tax at the rate of 7 per cent or 15 per cent. Therefore, where all or substantially all of the supplies for which the allowance is paid were made in participating provinces or the allowance is paid for the use of a motor vehicle in participating provinces, the amount of tax deemed to have been paid is equal to the amount of the allowance multiplied by the fraction 15/115. In any other case, the amount of tax deemed to have been paid is equal to the amount of the allowance multiplied by the fraction 7/107.

This provision applies to allowances paid after March 1997.

Clause 168

Reimbursement of Employees, Partners or Volunteers

ETA
175

Section 175 enables a person who is an employer, a partnership or a charity and who reimburses an employee, partner or volunteer for property or services acquired or imported to claim an input tax credit or rebate in respect of the reimbursed expense to the same extent as the person would have been able to claim the credit or rebate if the person had incurred the expense directly.

The proposed amendments to section 175 add references to property brought into a participating province since that is another occurrence that might result in tax becoming payable for which the employer, partnership or charity would seek to claim input tax credits.

The amendments come into force on April 1, 1997.

Clause 169

Warrantee Reimbursement

ETA
175.1

Section 175.1 enables a warrantor to claim an input tax credit in respect of the tax portion of a reimbursement made to the warranty holder (i.e., beneficiary) for the cost of property or services, such as repairs provided under the terms of a warranty, supplied to the beneficiary by a third party.

The amendments to section 175.1 reflect the fact that the beneficiary may have incurred tax upon bringing property covered under the warranty into a participating province.

The amendments come into force on April 1, 1997.

Clause 170

Used Returnable Containers

ETA
176

Subclause 170(1)

ETA
176(1) of the French Version

This amendment to subsection 176(1) of the French version of the Act deletes the reference to "tax fraction" as a consequence of the repeal of the definition of that term in subsection 123(1) (see commentary on subclause 150(2)). The amendment under subclause 170(3) provides for a new formula for determining the amount of tax that a registrant is deemed to have paid upon receiving supplies of certain used containers.

This amendment comes into force on April 1, 1997.

Subclauses 170(2) and (3)

ETA
176(1)

Subsection 176(1), as amended by subclause 25(1), is further amended to reflect the 15-per-cent HST rate in the participating provinces. Subparagraph 176(1)(*d*)(ii) is amended to ensure that the reference to "tax" calculated on that consideration includes a reference to all tax, being both the tax under subsection 165(1) and, where applicable, new subsection 165(2), the provincial component of the HST. Also as a consequence of the introduction of the 15-per-cent HST, the subsection is amended to remove the reference to "tax fraction", which only took into account tax at the rate of 7 per cent, and replace this with a formula which takes into account the appropriate tax rate, depending on where the supply referred to therein is made.

These amendments come into force on April 1, 1997.

Clause 171

Alternate Collection Method for Direct Sellers

ETA
178.3

Section 178.3 sets out the rules of the alternate collection method for direct sellers whereby sales tax on their exclusive products is calculated once at the time of sale by the direct seller to its independent sales contractors based on the suggested retail selling price of the products.

Subclause 171(1)

ETA
178.3(2)(*e*)(i)

Under paragraph 178.3(2)(*e*), if an independent sales contractor of a direct seller sells an exclusive product of the direct seller to any other person, the supply is deemed to be a taxable supply made, not by the contractor, but by the direct seller. However, that deeming rule does not apply for purposes of subsection 178.3(4), for example, which refers to a supply being made outside Canada by a contractor. The amendment to subparagraph 178.3(2)(*e*)(i) provides that the deeming rule also does not apply for purposes of new subsections 178.3(5) and (6). These subsections provide for certain adjustments as a result of a sale of an exclusive product of a direct seller by an independent sales contractor outside a participating province after HST has applied to the product at the direct seller level or a sale by the contractor of an exclusive product in a participating province after the GST has applied to the product.

This amendment comes into force on April 1, 1997.

Subclause 171(2)

Adjustment for Direct Seller

ETA
178.3(5) and (6)

New subsection 178.3(5) allows a direct seller to adjust net tax in cases where an independent sales contractor of the direct seller has purchased an exclusive product from the direct seller, the direct seller has accounted for tax at the 15-per-cent HST rate based on the suggested retail price of the product and the independent sales contractor has made a sale of the exclusive product outside the participating provinces. The direct seller may deduct from net tax an amount equal to the provincial component of the HST calculated on the suggested retail price of the product at the time the independent sales contractor sold the product. In order to claim a deduction from net tax, the direct seller must maintain evidence that the independent sales contractor made a sale outside the participating provinces. The direct seller must also credit the amount of the deduction to the independent sales contractor. The direct seller may claim the deduction in determining net tax for the reporting period in which the credit is given to the independent sales contractor or within two years after the due date of the return for the reporting period in which the credit is given.

New subsection 178.3(6) requires a direct seller to add to net tax an amount equal to the provincial component of the HST calculated on the suggested retail price of an exclusive product in certain cases. This adjustment is required where an independent sales contractor has purchased the exclusive product from the direct seller, the direct seller has accounted for tax at the 7-per-cent GST rate based on the suggested retail price of the product and the independent sales contractor has made a sale of the exclusive product in a participating province. The direct seller must add an amount equal to the provincial component of the HST calculated on the suggested retail price of the product at that time in determining net tax for the reporting period in which the supply is made by the independent sales contractor.

These amendments come into force on April 1, 1997.

Clause 172

Alternate Collection Method for Distributors of Direct Sellers

ETA
178.4

Section 178.4 sets out the rules of the alternate collection method for distributors of direct sellers whereunder sales tax on the direct seller's exclusive products is calculated once at the time they are sold by a distributor who has elected jointly with the direct seller to use the method.

Subclause 172(1)

ETA
178.4(2)(*d*)(i)

Under paragraph 178.4(2)(*d*), if an independent sales contractor of a distributor of a direct seller, who has elected to follow the tax collection method under section 178.4, sells an exclusive product to any other person, the supply is deemed to be a taxable supply, made not by the contractor, but by the distributor. However, that deeming rule does not apply for the purposes of subsection 178.4(4), for example, which refers to a supply being made by a contractor. The amendment to subparagraph 178.4(2)(*d*)(i) provides that the deeming rules likewise does not apply for the purposes of new subsections 178.4(5) and (6). These subsections provide for certain adjustments as a result of a sale of an exclusive product of a direct seller by an independent sales contractor outside a participating province after the HST has applied to the product at the distributor level or a sale by a contractor of an exclusive product in a participating province after the GST has applied to the product.

This amendment comes into force on April 1, 1997.

Subsection 172(2)

Adjustment for Distributor

ETA
178.4(5) and (6)

New subsection 178.4(5) allows a distributor (for whom an approval under subsection 178.4(1) is in effect) to adjust net tax in cases where an independent sales contractor has purchased an exclusive product from the distributor, the distributor has accounted for tax at the 15-per-cent HST rate based on the suggested retail price of the product and the independent sales contractor has made a sale of the exclusive product outside the participating provinces. The distributor may deduct from net tax an amount equal to the provincial component of the HST calculated on the suggested retail price of the product at the time the independent sales contractor sold the product. In order to claim a deduction from net tax, the distributor must maintain evidence that the independent sales contractor made a sale outside the participating provinces. The distributor must also credit the amount of the deduction to the independent sales contractor. The distributor may claim the deduction in determining net tax for the reporting period in which the credit is given to the independent sales contractor or within two years after the due date of the distributor's return for the reporting period in which the credit was given.

New subsection 178.4(6) requires a distributor to add an amount equal to the provincial component of the HST calculated on the suggested retail price of an exclusive product in certain cases. This adjustment is required where an independent sales contractor has purchased the exclusive product from the distributor, the distributor has accounted for tax at the 7-per-cent GST rate on the suggested retail price of the product and the independent sales contractor has made a sale of the exclusive product in a participating province. The distributor must add an amount equal to the provincial component of the HST calculated on the suggested retail price of the product at that time in determining net tax for the reporting period in which the supply is made by the independent sales contractor.

These amendments come into force on April 1, 1997.

Clause 173

Restrictions on Input Tax Credits

ETA
178.5(8)(*a*)

Existing subsection 178.5(8) denies input tax credits to a direct seller or a distributor of the direct seller (for whom an approval under subsection 178.4(1) is in effect) in respect of property or a service (other than an exclusive product of the direct seller or a sales aid) that is imported or acquired by the direct seller or distributor for the purpose of supplying it to an independent sales contractor of the direct seller or a relative of the contractor for consideration that is less than the fair market value of the property or service. Subsection 178.5(8) also provides that no tax is payable on the supply to the contractor or the relative of the contractor. These rules apply where the contractor or the relative of the contractor is acquiring the property or service for use otherwise than in a commercial activity. The amendment to paragraph (*a*) results in the denial of input tax credits to the direct seller or distributor also in respect of tax payable upon bringing the property into a participating province.

This amendment comes into force on April 1, 1997.

Clause 174

Drop-Shipments

ETA
179

Subclause 174(1)

ETA
179(1)

Subsection 179(1), as amended by subclause 30(2), is further amended as a consequence of the introduction of the HST. Amended paragraph 179(1)(*c*) determines consideration that is deemed to have been paid in respect of a supply by a registrant to a non-resident person of property to which the drop-shipment rules set out in section 179 apply. These rules remain the same except that they are divided into separate paragraphs, (*c*) and (*c*.2), and new paragraph (*c*.1) is added to provide for the place where the deemed supply of the property to considered to be made. Paragraph 179(1)(*c*.1) provides that where physical possession of the property is transferred in a participating province, the supply is deemed to be made in the participating province and, as a result, the 15-per-cent HST rate applies.

These changes come into effect on April 1, 1997.

Subclause 174(2)

ETA
179(6)(*b*)

The amendment to paragraph 179(6)(*b*) removes the specific reference to "the acquisition or importation" of property so that the provision also applies to input tax credits in respect of tax payable on bringing property into a participating province.

This change is effective on April 1, 1997.

Clause 175

Coupons

ETA
181

Section 181 sets out the rules for the sales tax treatment of supplies for which a manufacturer's or retailer's coupon is accepted as full or partial consideration. The section is amended by adding the definition "tax fraction" of a coupon value or of the discount or exchange value of a coupon. This is consequential to the repeal of the existing definition "tax fraction" in subsection 123(1). The new definition provides that the tax fraction is 15/115 in respect of coupons accepted as consideration for supplies made in participating provinces, which reflects the HST rate of 15-per-cent in those provinces.

Subsection 181(3) is amended to apply where a registrant accepts a non-reimbursable coupon that specifies a percentage reduction in the price of the property or service to which the coupon applies. As a result, the registrant has the option of treating the coupon as if it were a reimbursable coupon (i.e., as a partial payment that does not reduce the consideration for the property or service) and therefore subject to the rules set out in subsection 181(2), or as a reduction in the consideration for the supply and subject to the rules set out in subsection 181(4). If the registrant treats the coupon in the same manner as a reimbursable coupon, the registrant will calculate the tax payable on the supply before deducting the value of the coupon and will be entitled to claim an input tax credit equal to the tax fraction of the coupon value.

Where the registrant expects to be reimbursed by a third party for accepting a percentage discount coupon, the rules described in section 181(4) will continue to apply.

Subsection 181(5) permits a registrant that reimburses a vendor for certain coupons accepted by the vendor to claim an input tax credit in respect of the reimbursements. The subsection is amended to refer to reimbursements for fixed percentage reduction coupons since the treatment under subsection 181(3) has been extended to this type of coupon. In addition, the reference to "tax fraction" is changed to a reference to the tax fraction of the coupon value, which is newly defined in subsection 181(1).

These amendments come into force on April 1, 1997.

Clause 176

Rebates

ETA
181.1

Section 181.1

Section 181.1 deals with rebates in respect of goods or services taxable at the rate of 7 per cent, offered to a customer acquiring the goods or services from the manufacturer or other vendor. Under the existing section, where the issuer of the rebate provides written notification with the rebate that it includes an amount on account of GST, the issues may claim an input tax credit equal to the tax fraction of the rebate. Certain rebate recipients, by virtue of paragraph 181.1(*f*), have an obligation to add the amount of the rebate that is on account of the GST to their net tax to the extent that they have claimed an input tax credit for that amount.

The amendments to section 181.1 ensure that the amount of the input tax credit or of the addition to next tax reflects the tax rate of 15 per cent where the supply to the rebate recipient was made in a participating province.

This amendment comes into force April 1, 1997.

Clause 177

Forfeitures and Extinguishment of Debt

ETA
182 (1)(*a*) and (*b*)

Section 182 deals with the situation where, as a consequence of the breach, modification or cancellation of an agreement for the making of a taxable supply, amounts are paid or forfeited by a person to a registrant otherwise than as consideration for the supply. The section also deals with situations where a debt or other obligation of a registrant to a person is reduced or extinguished without payment on account of the debt or obligation. In both cases, the registrant is treated as having made a taxable supply to the other person and as having collected tax on the amount paid, forfeited, reduced or extinguished. The person paying or forfeiting the amount is deemed to have paid tax and, if a registrant, may be entitled to an input tax credit for that tax.

Paragraphs 182(1)(*a*) and (*b*), as enacted by subclause 32(1), are amended to take into account tax payable at the 15-per-cent HST rate in a participating province.

This amendment comes into force on April 1, 1997.

Clause 178

Seizures and Repossessions

ETA
183

Section 183 provides rules for the application of the GST to property seized or repossessed by a creditor.

The amendments to section 183 replace references to "tax fraction" with references to either the 7-per-cent GST rate or the 15-per-cent HST rate, whichever is applicable.

In recognition of the fact that many of these properties would not have borne the 8-per-cent provincial component of the HST before being seized or repossessed, a notional input tax credit will not be available to the creditor in respect of the provincial portion of the HST where the property was seized or repossessed before April 1, 2000. This parallels the approach adopted during the implementation of the GST.

The deemed supply under subsection 183(4) by a creditor of the seized or repossessed property that the creditor begins to use otherwise than in making a supply is, pursuant to section 1 of Part IX of new Schedule IX (i.e., the place of supply rules), considered to be made where the property is situated at the time the creditor begins to so use it. Therefore, the 15-per-cent tax rate applies where the property is situated in a participating province at that time. The same result is obtained under amended subsections 183(5) and (6). The notional input tax credit allowed to a creditor at the time certain property seized or repossessed after March 2000 is resupplied will be based on where the property was situated at the time it was seized or repossessed but in no case will the credit exceed the tax collectible on the resupply.

These amendments come into force on April 1, 1997.

Clause 179

Transfers to Insurers

ETA
184

Section 184 provides rules for the treatment of property transferred to an insurer in the course of settling an insurance claim.

The amendments to section 183 replace references to "tax fraction" with references to either the 7-per-cent GST rate or the 15-per-cent HST rate, whichever is applicable.

In recognition of the fact that many of these properties would not have borne the 8-per-cent provincial component of the HST before being seized or repossessed, a notional input tax credit will not be allowed to the insurer in respect of the provincial portion of the HST where the property was transferred before April 1, 2000. This parallels the approach used during the implementation of the GST.

The deemed supply under subsection 184(3) by an insurer of the transferred property that the insurer begins to use otherwise than in making a supply is, pursuant to section 1 of Part IX of new Schedule IX (i.e., the place of supply rules), considered to be made where the property is situated at the time the insurer begins to so use it. Therefore, the 15-per-cent tax rate applies where the property is situated in a participating province at that time. The same result is obtained under amended subsections 184(4) and (5). The notional input tax credit allowed to an insurer at the time certain property transferred to the insurer after March 2000 is resupplied will be based on where the property was situated when last held by the insured person before being transferred, but in no case will the credit exceed the tax collectible on the resupply.

This amendment comes into force on April 1, 1997

Clause 180

Financial Services – Input Tax Credits

ETA
185(1)

Existing subsection 185(1) simplifies the operation of the tax for persons that are not financial institutions and that, in the course of their commercial activity, also provide some incidental financial services. The existing section deems property and services acquired or imported by such a person and relating to the incidental financial services to be for use in the person's commercial activities. As a result, the person is not able to claim input tax credits for those inputs.

Subsection 185(1), as amended by subclause 35(1), is further amended as a consequence of the introduction of the HST to also refer to property brought into a participating province since this is another occurrence that will in some cases result in tax becoming payable for which an input tax credit would be sought.

This amendment comes into force on April 1, 1997.

Clause 181

Related Corporations

ETA
186

Section 186 deems a parent company that incurs expenses in relation to the shares of a subsidiary all or substantially all of whose property is for consumption, use or supply in commercial activities to have incurred those expenses in the course of a commercial activity. This enables the parent to claim inputs tax credits for those expenses. Existing subsection 186(1) refers to property or services acquired or imported. A reference is added to property brought into a participating province since this is another occurrence that will, in some cases, result in tax becoming payable for which input tax credit would be sought.

This amendment comes into force on April 1, 1997.

Clause 182

Bets and Games of Chance

ETA
187

The amendment to section 187 provides that where a bet is placed in a participating province, a supply of a service is deemed to have been made in that province. In addition, the formula in the section is amended to delete the reference to "consideration fraction" as a consequence of the repeal of the definition of that term in subsection 123(1). The amended formula reflects the 15-per-cent HST rate applicable to supplies made in a participating province.

This amendment comes into force on April 1, 1997.

Clause 183

Non-substantial Renovations

ETA
192(*a*)

Section 192 provides a self-supply rule for non-substantial renovations made by a person who in the course of a business makes supplies of real property. In the absence of this rule, a used residential complex that has undergone renovations or alterations that do not meet the criteria of substantial renovations would remain tax-exempt on subsequent sale. Section 192 deems the person to have made and received a taxable supply of property for consideration equal to the total of all non-taxable costs (other than amounts paid for financial services) attributable to the renovation or alteration that would be included in determining the adjusted cost base of the complex for income tax purposes if the complex were capital property of the person. The tax is deemed to have been collected at the earlier of the time the renovation is substantially completed and the time ownership of the complex is transferred.

This amendment clarifies that the deemed taxable supply is made in the province in which the complex is situated. Consequently, in the above circumstances, a person who had made non-substantial renovations to property situated in a participating province would be required to self-assess tax at the harmonized rate of 15 per cent. Alternatively, a person who had made non-substantial renovations to property situated in a non-participating province would be required to self-assess tax at the GST rate of 7 per cent.

This amendment is effective on April 1, 1997.

Clause 184

Real Property Credits

ETA
193

Section 193 allows a registrant who makes a taxable supply by way of sale of real property to claim an input tax credit for previously non-recoverable tax paid by the registrant in respect of the property, except under certain circumstances.

The existing formulae for determining the credit does not take into account a situation where the unrecoverable tax might have been calculated at the rate of 7 per cent but the sale takes place after April 1, 1997 in a participating province where the tax rate is 15 per cent or vice versa. The amended formulae use the "basic tax content" factor, which is newly defined in subsection 123(1) in order to arrive at a result that properly takes account of the different tax rates (see commentary on subclause 150(6)).

This amendment applies to supplies made on or after April 1, 1997.

Clause 185

Incorrect Statement

ETA
194(*a*)

Section 194 imposes a liability for tax on a supplier who makes a taxable sale of real property but incorrectly states or certifies that it is an exempt supply of a residential complex or an exempt sale of real property under section 9 of Part I of Schedule V to the Act. Unless the purchaser knew or ought to have known that it was not an exempt supply, the supplier is liable, under the existing section, for tax equal to the tax fraction of the consideration for the supply.

As mentioned in subclause 160(2), the definition "tax fraction" has been repealed. Under amended section 194, the amount of tax the supplier is deemed to have collected will depend upon whether the provincial component of the HST imposed under subsection 165(2) is payable in respect of the supply. If that is the case, the tax will equal 15/115ths of the consideration. Otherwise, the tax will equal 7/107ths of the consideration. All the other rules in section 194 will remain the same.

This amendment applies to supplies of real property the ownership and possession of which are transferred to the purchaser after March 1997.

Clause 186

Prescribed Property

ETA
195

This amendment provides for the authority to prescribe property brought into a participating province for use as capital property to be treated as personal property and not real property. The section already provides such regulation-making authority with respect to property acquired or imported.

This amendment is effective April 1, 1997.

Clause 187

Intended and Actual Use

ETA
196(2)

Existing section 196 is renumbered as subsection 196(1) and new subsection 196(2) is added to ensure that the manner in which a person was using property immediately before the time the person brings it into a participating province from a non-participating province will be considered to be the intended use of the property for which it is brought into the participating province. This is relevant to determine, for example, the amount of an input tax credit, if any, that the person can claim in respect of the tax payable under new Division IV.1 upon bringing the property into the participating province.

This amendment is effective April 1, 1997.

Clause 188

Appropriation to Use as Capital Property

ETA
196.1(*b*)(ii)

Where a registrant appropriates non-capital property for use as capital property or as an improvement to capital property, section 196.1 deems the registrant to have sold and purchased the property.

If, before it was appropriated, the property was last acquired or imported for consumption, use or supply, or was consumed or used, in the course of commercial activities, the registrant is deemed to have collected and paid tax calculated on the fair market value of the property at the time of appropriation.

However, if the property was not last acquired or imported for consumption, use or supply in commercial activities and was never consumed or used in the course of commercial activities by the registrant, the existing provision deems the registrant to have paid tax equal to the lesser of the tax previously paid and tax calculated on the fair market value of the property, prorated for any rebate under section 259 that may have been claimed in respect of the tax previously paid. The latter calculation does not yield an appropriate result in all cases in the context of the HST, such as when the tax previously paid was calculated at the rate of 7 per cent and the tax calculated on the fair market value at the time of appropriation would be calculated at the rate of 15 per cent. Therefore, the amended calculation uses the "basic tax context" factor, which is newly defined in subsection 123(1), in order to arrive at a result that properly takes account of the different tax rates (see commentary on subclause 150(6)).

This amendment is effective April 1, 1997.

Clause 189

Change in Use and Capital Acquisitions Outside Canada

ETA
198.1; 198.2

Section 198.1 limits, in specified circumstances, the tax liability imposed on registrants as a consequence of the change-in-use rules under Subdivision d of Division II of Part IX of the Act. The specified circumstances include where there has been an amendment to the Act that results in a person who was previously making taxable supplies being considered to be making exempt supplies and thus a change in use of capital property is triggered. Section 198.1 provides that the amount of tax deemed to have been collected or paid in the specified circumstances does not exceed the tax that is or would, but for section 167, have been payable by the registrant in respect of the last acquisition or importation of the property and improvements made to the property thereafter. For example, if a person had acquired property before 1991 and no improvements were made after 1990, the amount of tax deemed to have been collected by the registrant in respect of the property in one of the specified circumstances would be nil since the property was never subject to tax under Part IX of the Act.

As a consequence of amendments to the change-in-use rules, as of April 1, 1997, the amount of tax deemed to have been paid or collected by a registrant under those rules will be determined by reference to the basic tax content of the property at the relevant time (as newly defined in subsection 123(1)). No tax amount would be included in the basic tax content of property that was never subject to GST. Similarly, the provincial component of the HST would not be included in the basic tax content where the property was never subject to that tax. Therefore, section 198.1 is no longer required and is therefore repealed.

Clause 189 also repeals section 198.2. Existing section 198.2 applies where a registrant receives a taxable supply of personal property or a service made outside Canada that is capital property or an improvement to capital property of the registrant and the registrant is not required to pay tax on the property or service because it is for consumption, use or supply exclusively in the course of commercial activities of the registrant (i.e., Division IV does not apply). In these cases, existing section 198.2 deems the registrant, for the purposes of certain change-in-use provisions, to have paid tax and to have claimed an input tax credit equal to 7 per cent of the value of the consideration determined in accordance with Division IV. As a result, should the registrant subsequently change the use of the capital property so that it is no longer used exclusively in commercial activities, the registrant must account for tax under the change-in-use provisions.

Effective April 1, 1997, the change-in-use provisions are amended such that the amount of tax deemed to be paid or collected is determined by reference to the basic tax content of the property. The basic tax content is newly defined in subsection 123(1) and includes not only an amount of tax actually paid or payable but also tax that would have been payable when the property (or improvements to the property) was acquired, imported or brought into a participating province but for the fact that the person acquired, imported or brought the property into the participating province for consumption, use or supply exclusively in the course of commercial activities of the person. Therefore, section 198.2 is no longer required and is repealed.

This amendment is effective April 1, 1997.

Clause 190

Capital Personal Property

ETA
199

Subclause 190(1)

Acquisition of Capital Personal Property

ETA
199(2)

As a consequence of subsection 199(2), a registrant can claim an input tax credit for all the tax payable in respect of an acquisition or importation of personal property (other than certain specified property) that is for use by the registrant as capital property primarily in commercial activities of the registrant since the property is considered to have been acquired or imported for use exclusively in commercial activities. Conversely, where the property is for use less than primarily in commercial activities, the registrant is denied any input tax credits.

As a consequence of the introduction of self-assessment provisions in respect of the provincial component of the HST in new Division IV.1, subsection 199(2) is amended to include a reference to property that is brought into a participating province for use as capital property. Therefore, a registrant who brings capital personal property into a participating province for use primarily in commercial activities is considered to be bringing the property into the province for use exclusively in commercial activities and is not required to self-assess tax under Division IV.1 (see commentary on clause 254 with reference to section 22 of Part I of Schedule X to the Act).

This amendment is effective April 1, 1997.

Subclause 190(2)

Beginning Use of Personal Property

ETA
199(3)(*b*)

Existing subsection 199(3) deems a registrant who begins to use capital personal property primarily in a commercial activity to have paid tax equal to an amount calculated by a specified formula. Under the existing formula, the amount of tax deemed to have been paid is determined by reference to the tax that was or would, but for section 167, have been payable by the registrant in respect of the last acquisition or importation of the property and improvements made to the property thereafter and the tax calculated on the fair market value of the property at the time of the change in use. The formula also takes into account any rebate under section 259 to which the registrant may have been entitled.

The existing formula does not yield the appropriate result in the context of the HST in all circumstances, such as when tax previously paid or payable was calculated at the rate of 7 per cent but tax calculated on the fair market value of the property at the time of the change in use would be calculated at the rate of 15 per cent if the property were, at that time, situated in a participating province. The converse situation is equally problematic where the original tax payable was calculated at the rate of 15 per cent but the applicable tax rate at the time of the change in use is 7 per cent because the property was removed to a non-participating province from a participating province after its purchase.

The provision is amended so that the amount of tax deemed to have been paid by the registrant will equal the basic tax content of the property, which is newly defined in subsection 123(1). The basic tax content of property includes not only an amount of tax actually paid or payable in respect of the property but also tax that would, but for section 167, have been payable. Where the registrant was entitled to a rebate under section 259, that amount enters into the basic tax content calculation as well.

This amendment is effective April 1, 1997.

Subclause 190(3)

Improvement to Capital Personal Property

ETA
199(4) and (5)

Under subsection 199(4), a registrant is entitled to an input tax credit for tax payable in respect of an acquisition or importation of an improvement to capital property only where, at the time tax becomes payable or is paid without having become payable, the capital property is used primarily in commercial activities.

As a consequence of the introduction of the self-assessment provisions in respect of the provincial component of the HST in new Division IV.1, subsection 199(4) is amended to include a reference to improvements that are brought into a participating province. Therefore, a registrant who brings an improvement to capital personal property into a participating province at a time when the capital property is used primarily in commercial activities would not be required to self-assess tax under Division IV.1, since the registrant would be considered to be bringing in the improvement for use exclusively in commercial activities.

The wording of subsection 199(5) is amended to likewise encompass property (in this case, a musical instrument) brought into a participating province. The existing provision refers to the instrument as having been acquired or imported. By referring instead to the musical instrument as being capital property, it is not necessary to specify that the instrument was "acquired, imported or brought into a participating province".

This amendment is effective April 1, 1997.

Clause 191

Ceasing Use of Personal Property

ETA
200(2)

Subsection 200(2) deems a registrant to have made and received a supply by way of sale of capital personal property where the registrant was using the property primarily in commercial activities and begins to use it primarily for other purposes. Under the existing rules, the registrant is deemed to have paid and collected tax calculated on the fair market value of the property.

The existing provision does not result in the appropriate amount of tax deemed to have been paid and collected where, for example, the tax previously payable in respect of the property was calculated at the rate of 7 per cent and the tax calculated on the fair market value of the property at the time of the change in use is calculated at the rate of 15 per cent because the property is situated at that time in a participating province. The converse situation would likewise be inappropriately dealt with under existing subsection 200(2).

The subsection is amended such that the amount of tax deemed to have been paid and collected is determined by reference to the basic tax content of the property at the time of the change in use. The basic tax content is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

This amendment is effective on April 1, 1997.

Clause 192

Value of Passenger Vehicle

ETA
201

Under existing section 201, the maximum amount of input tax credits a registrant is allowed to claim in respect of tax payable on the acquisition or importation of a passenger vehicle (and any improvements made thereto) is restricted to the amount of tax calculated on the amount deemed under paragraph 13(7)(*g*) or (*h*) of the *Income Tax Act* to be the capital cost of the passenger vehicle. Where the tax payable by the registrant is in respect of a change in use of a passenger vehicle under subsection 199(3), or 206(2) or (3) and the registrant is entitled to claim a rebate under section 259, the amount deemed under section 201 to be the tax payable would be further adjusted to take account of that rebate.

Section 201 is amended to extend the above rules to passenger vehicles brought into a participating province. Under amended section 201, the maximum amount of input tax credits a registrant is allowed to claim in respect of tax payable on the acquisition, importation or bringing into a participating province of a passenger vehicle (and any improvements made thereto) is deemed to be the lesser of the tax payable by the registrant on the acquisition, importation or bringing in, as the case may be, of the vehicle and the amount determined under the formula. The amount determined under the new formula is the excess amount, it any, that is obtained by subtracting the total input tax credits to which the registrant was entitled in respect of the last acquisition or importation of the vehicle or improvements to it by the registrant from the tax that would be payable by the registrant if the registrant were acquiring the vehicle in the participating province into which it is brought (or simply if it was acquired in Canada in the case where it is not brought into a participating province) for consideration equal to the amount deemed under paragraph 13(7)(*g*) or (*h*) of the *Income Tax Act* to be the capital cost of the vehicle. The amount of tax that would be payable is adjusted to account for any portion that would be rebatable under section 259.

This amendment is effective April 1, 1997.

Clause 193

Input tax Credit for Passenger Vehicle or Aircraft

ETA
202(2) to (4)

Section 202 sets out rules for determining input tax credits in respect of passenger vehicles and aircraft, and improvements thereto, acquired or imported for use as capital property of a registrant. Amendments are made to also refer to vehicles and aircraft (and improvements thereto) brought into a participating province since that is an occurrence that might likewise result, in some cases, in tax becoming payable by the registrant for which an input tax credit would be sought and to which section 202 should apply.

In addition, the formula under subsection 202(4) is amended to delete the reference to "tax fraction" since the definition of that term in subsection 123(1) is repealed. Instead, the formula applies the fraction 7/107 where the vehicle or aircraft is acquired or imported, or deemed to have been acquired under subsection 202(5), in circumstances in which only the 7-per-cent GST rate applied. The fraction 8/108 applies where the vehicle or aircraft (or improvement) is being brought into a participating province from a non-participating province or is acquired in such a province from an unregistered non-resident person who was not required to pay tax on the vehicle, aircraft or improvement, both of which are circumstances in which only the provincial component of the HST applies. Finally, the fraction 15/115 applies where the acquisition, or importation, or deemed acquisition under subsection 202(5), is one to which the 15-per-cent HST rate applies.

This amendment is effective April 1, 1997.

Clause 194

Passenger Vehicles

ETA
203(1) and (2)

Subsection 203(1) allows a registrant who makes a taxable sale of a passenger vehicle that was last used as capital property in commercial activities of the registrant to claim an input tax credit in respect of the tax previously paid by the registrant in respect of the vehicle that was not recovered because of the rule under section 201 which denies an input tax credit for the tax calculated on the cost of the vehicle in excess of its capital cost for income tax purposes.

At the time the vehicle is sold, the maximum amount of input tax credit available is basically the amount of unrecovered tax or the tax calculated on the fair market value of the property at the time of sale, whichever is less.

Subsection 203(1) is amended so that the amount of input tax credit available is determined on the basis of the basic tax content of the property at the time the vehicle is sold. The basic tax context of property is newly defined in subsection 123(1) (see commentary on subclause 150(6)). Basing the determination of the input tax credit on the basic tax content addresses the case where the tax previously paid in respect of the vehicle was calculated at a differente rate than the tax calculated on the sale because the vehicle was moved from a participating province to a non-participating province (or vice versa) since tax was last paid on the vehicle.

Similarly, the existing rule under subsection 203(2) that results in a registrant who is an individual or partnership having to remit tax calculated on the fair market value of a passenger vehicle or aircraft that is no longer used exclusively in commercial activities is amended to refer to the basic tax context of the vehicle or aircraft. The intent of the subsection is to recapture previously claimed input tax credits not exceeding the tax on the depreciated value (i.e., current fair market value) of the vehicle or aircraft. However, here again, the existing rule would yield an inappropriate result (either recapturing too little or too much) if the tax previously paid in respect of the vehicle or aircraft were calculated at a different rate than the rate applicable at the time of the change in use.

These amendments are effective April 1, 1997.

Clauses 195 to 197

Change In Use of Capital Property

ETA
206 to 208

These sections set out rules that apply when a registrant changes the extent to which the registrant is using capital property in commercial activities. An increase in, or commencement of, use in commercial activities generally results in the registrant being deemed to have acquired and paid tax in order to enable the registrant to claim an input tax credit. Conversely, a reduction in, or cessation of, use in commercial activities generally results in the registrant being deemed to have made a supply and to have collected tax, giving rise to a tax liability that is intended to have the effect of recapturing previously claimed input tax credits not exceeding tax on the current fair market value of the property where it has depreciated in value.

Tax calculated on the fair market value of the property at the time of the change in use is one factor that is taken into account in determining, under the existing provisions, the amount that the registrant is deemed to have been paid or collected. However, the use of this factor in these provisions would not, in all cases, yield an appropriate result after the introduction of the HST at the rate of 15 per cent on April 1, 1997 in participating provinces. An inappropriate result would be obtained if, for example, tax previously paid in respect of the property and which is intended to be recaptured or included in an input tax credit was calculated at the 7-per-cent GST rate while tax calculated on the property's fair market value at the time of the change in use would be calculated at the 15-per-cent HST rate if the property is, at that time, situated in a participating province. The converse situation would similarly yield anomalous results. Alternatively, the amended provisions determine the amount to be recaptured, or to be claimed as an additional input tax credit, by reference to the basic tax content of the property, which is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

An additional change is made in subsection 208(4). That subsection restricts the ability of a registrant who is an individual to claim an input tax credit in respect of property or a service acquired or imported as an improvement to real property. The subsection is amended by adding a reference to an improvement brought into a participating province since that is another occurrence that may result in tax becoming payable by the registrant for which an input tax credit would be sought and to which this subsection should apply.

These amendments come into force on April 1, 1997.

Clause 198

Deemed Sale Where Election

ETA
211(2)(*a*)

Under existing subsection 211(2), where an election in respect of real property is made by a public service body to treat its otherwise exempt supplies of certain real property as taxable supplies, the body is considered to have made a supply of the property immediately before the election takes effect and to have received on the day it takes effect a taxable supply of the property. The body is also deemed to have collected and paid tax on the deemed sale equal to the lesser of tax that was payable by the body in respect of the last acquisition of the property and any improvements made to the property thereafter and tax calculated on the fair market value of the property. This existing rule does not yield the appropriate result in circumstances where tax previously paid in respect of the property was calculated at the 7-per-cent GST sale while tax calculated on the fair market value of the property at the time of the election is calculated at the 15-per-cent HST rate because the property is situated in a participating province, or vice versa.

Subsection 211(2) is amended so that the amount of tax deemed to have been collected and paid by the body will equal the basic tax content of the property on the day the election takes effect. The basic tax content of property is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

This amendment is effective April 1, 1997.

Clause 199

Imposition

ETA
212 and 212.1

Existing section 212 provides for the imposition of tax on goods imported by a person who is liable under the *Customs Act* to pay duty on the goods, or would be so liable if the goods were subject to duty. The tax is equal to 7 per cent of the value of the goods and is collected by Customs officials at the time of importation, as if it were a duty under the *Customs Act*.

Minor wording changes are made to this section to provide for consistency with other tax imposition provisions in Part IX of the Act.

New subsection 212.1(1) sets out a definition of the term "commercial goods" for purposes of new subsection 212.1(3). The term "commercial goods" has the meaning assigned by the *Accounting for Imported Goods and Payment of Duties Regulations* made for purposes of section 32 of the *Customs Act*. "Commercial goods" will therefore include any goods that are imported for sale or for any commercial, industrial, occupational, institutional or other similar use.

New section 212.1 imposes a tax under Division III, which is the provincial component of the HST in respect of certain importations by residents of participating provinces. This tax applies in addition to the tax imposed under section 212.

Generally, the tax imposed under new section 212.1 will be collected by Canada Customs at the time of importation, where the goods in question are accounted for under section 32 of the *Customs Act* as other than "commercial goods" (e.g., where residents of participating provinces import goods for personal use.) There is a requirement under new section 220.07 to self-assess the provincial portion of the HST in respect of certain importations accounted for as commercial goods.

There are certain circumstances in which the tax under section 212.1 will not be payable even on non-commercial importations by residents of participating provinces. For example, the tax will not be imposed at the time of importation in respect of motor vehicles that are required to be registered under provincial law. Rather, the provincial portion of the HST payable in respect of the importation of such vehicles will be payable to the Receiver General in accordance with section 220.07 in new Division IV.1 and collected by provincial authorities at the time when the vehicle is registered in a participating province.

In addition, the tax under section 212.1 will not apply in respect of a mobile or floating home that has been used or occupied in Canada by individuals as a place of residence and, by virtue of existing section 213, the provincial portion of the HST will not apply in respect of goods that are listed in Schedule VII.

Existing sections 214 and 215, which already apply in respect of the tax imposed under section 212, will also apply in respect of the tax imposed under new section 212.1. As a result, any tax payable under section 212.1 will be paid and collected as though it were a duty imposed under the *Customs Tariff*, and will be calculated on the excise and duty-paid value of the imported goods.

Section 212.1 will apply to goods imported or accounted for under section 32 of the *Customs Act* on or after April 1, 1997 (see the application rule under new subsection 349(3)).

Clause 200

Security

ETA
213.1

Existing section 213.1 provides authority for the Minister of National Revenue to require that security be posted by any person who imports goods and is liable for tax under section 212.

The provision is amended to add a reference to new section 212.1, thus enabling the Minister to require the posting of security for amounts payable under sections 212 and 212.1.

This amendment is effective April 1, 1997.

Clause 201

Payment of Taxes

ETA
214 and 214.1

Section 214 Payment

Existing section 214 provides that the tax payable under Division IV must be paid and collected under the *Customs Act* as if it were a duty levied under the *Customs Tariff.*

The provision is amended to provide that it also applies for purposes of new section 212.1.

This amendment is effective April 1, 1997.

Section 214.1 Deduction for Printed Books etc.

New section 214.1 provides the mechanism for delivering the provincial rebate in respect of the provincial component of the HST on imported books and other qualifying publications referred to in new subsection 259.1(1). The mechanism for providing the rebate in respect of domestic sales is provided under new subsection 234(3).

Under that subsection, a registrant may, in calculating net tax for a reporting period, deduct a prescribed amount that has been paid to or credited in favour of the recipient of a supply of a printed book or other qualifying publication. The amount to be prescribed for that purpose is the provincial component of the HST in respect of the publication. By that mechanism, the recipient of a taxable supply made in Canada of a printed book or other qualifying publication will effectively receive the benefit of the rebate of the provincial component of the HST at the time of purchase. New section 214.1 provides for a similar result in respect of the provincial component of the HST imposed on imported printed books and other qualifying publications. Where an amount of tax is payable under new section 212.1 and the amount would be a prescribed amount for purposes of subsection 234(3), the amount may be deducted in determining the total amount of tax that is required to be paid in respect of the importation.

This amendment is effective April 1, 1997.

Clause 202

Rebate for Returned Goods

ETA
215.1(2)

Existing subsection 215.1(2) provides for a rebate of tax paid on goods imported under certain circumstances by an unregistered small supplier where an abatement or refund of the duties paid on the goods has been granted under the *Customs Act* because the goods were damaged, of inferior quality, defective, did not include the correct quantity or were not the goods ordered.

The formula in subsection 215.1(2) is used to calculate the amount of the rebate. Element "A" in the formula is amended to provide for the calculation to be made using the tax rate of 15 per cent in the case of goods in respect of which the HST is payable.

This amendment applies to rebates in respect of amounts paid as tax on or after April 1, 1997.

Clause 203

Tax on Imported Taxable Supplies

ETA
Division IV Heading

The heading of Division IV is amended to reflect the fact that it also applies, in the case of the rules pertaining to drop shipments of goods, to some supplies of tangible personal property.

This amendment comes into force on Royal Assent.

Clause 204

Tax on Imported Taxable Supplies

ETA
218 to 218.2

Section 218 Tax at 7 per cent

Subsection 218(1) imposes a liability on every recipient of an imported taxable supply (within the meaning of section 217) to pay tax at the rate of 7 per cent calculated on the value of the consideration for the supply. Existing subsection 218(2) provides that the tax imposed under Division IV is payable by the recipient on the earlier of the day on which the consideration is paid and the day on which it becomes due.

Existing subsection 218(1) is renumbered as section 218 and minor wording changes are made for consistency with other tax imposition provisions in Part IX of the Act. The rules in existing subsection 218(2) are incorporated in new section 218.2, which provides for the time of payment of the taxes imposed under section 218 and new section 218.1.

This amendment is effective April 1, 1997.

Subsection 218.1(1) Tax in Participating Provinces

Division IV of Part IX of the Act requires tax to be self-assessed by residents of Canada in respect of certain supplies made outside Canada of property or services that are for use otherwise than exclusively in the course of a commercial activity of the recipient. The Division is amended to apply the provincial portion of the HST to such supplies. For the most part, the new tax applies in circumstances parallel to those under which tax under section 218 applies to such supplies.

The tax imposed under new section 218.1 applies in addition to the tax imposed under section 218.

A resident of a participating province who is the recipient of an imported taxable supply of intangible personal property or a service will be liable for the provincial component of the HST where the property or service is acquired for consumption, use or supply primarily in the participating provinces. The amount of tax payable in these circumstances will be calculated with regard to the extent to which the property will be consumed, used or supplied in the participating province in which the recipient is resident.

The tax will also be imposed upon every registrant who is the recipient of a taxable supply of tangible personal property described in paragraph (*b*) of the definition "imported taxable supply" in section 217 (i.e. "drop-shipped" property), where physical possession of the property is transferred to that registrant in a participating province. In these circumstances, the tax will be calculated on the value of the consideration for the imported taxable supply.

Finally every person who is the recipient of a taxable supply of tangible personal property described in paragraph (*b*.1) of the definition "imported taxable supply" that is delivered or made available to the person in a participating province will be liable for tax calculated on the full consideration for the supply regardless of the extent to which it was acquired for consumption, use or supply in a participating province provided the person is a registrant or a resident of the province.

This amendment is effective April 1, 1997.

Subsection 218.1(2) Selected Listed Financial Institutions

New subsection 218.1(2) provides that tax is not imposed under subsection 218.1(1) on an imported taxable supply if, at the time that tax would have become payable, the recipient is a selected listed financial institution (within the meaning of new subsection 225.2(1). These institutions account for the provincial portion of the HST on their purchases through adjustments to their net tax calculation under new subsection 225.2(2).

This subsection is effective April 1, 1997.

Section 218.2 When tax payable

New section 218.2 incorporates the rules of existing subsection 218(2) and applies for purposes of determining the time at which the tax imposed under Division IV, both existing section 218 and new section 218.1, is payable.

Pursuant to section 218.2, tax under the Division calculated on an amout of consideration becomes payable on the day on which that consideration is paid or becomes due, whichever is earlier.

This amendment is effective April 1, 1997.

Clause 205

Property and Services Brought Into a Participating Province

ETA
Division IV.1

New Division IV.1 provides for self-assessment of the provincial component of the HST in certain circumstances where taxable property or services are either imported from outside of Canada into a participating province or are supplied in Canada in a non-participating province and then brought into a participating province by a person for consumption, use or supply in that province. Special rules provide for the treatment of property brought into a participating province by someone other than the person on whose behalf it was acquired or by certain selected listed financial institutions (as newly defined in subsection 225.2(1)) and for property brought into a participating province en route to a destination outside the participating provinces.

These amendments come into force on April 1, 1997. Reference should also be made to the application and transition rules in new section 349.

Section 220.01 Meaning of "tangible personal property"

The definition of "tangible personal property" which otherwise applies for the purposes of Part IX is broadened for the purposes of new Division IV.1 to include mobile homes not affixed to land and floating homes (both of which are included in the definition of real property under subsection 123(1)).

Section 220.02 Carriers

This new provision ensures that where goods are brought into a participating province, by someone other than a resident of the participating provinces, on behalf of or for delivery to such a resident, any requirement to self-assess the provincial portion of the HST applies to the resident, rather than to the person who has transported the goods into the province on the resident's behalf.

Section 220.03 Goods In Transit

This new provision ensures that the requirement to self-assess the provincial portion of the HST in respect of goods brought into a participating province does not arise where the goods are simply transported through the participating province en route to a destination outside the participating provinces.

Section 220.04 Selected Listed Financial Institutions

Pursuant to new section 225.2, a person who under that section is a "selected listed financial institution" during a reporting period is required to make adjustments in calculating net tax for the period to arrive at the financial institution's total liability for the provincial portion of the HST. Those adjustments have the effect of applying the provincial component of the HST to an attributed amount of consumption, use or supply in the participating provinces of all the institution's acquisitions and importations. Accordingly, new section 220.04 provides that, where these special adjustments are required to be made in determining net tax for a reporting period, there is no requirement for the selected listed financial institution to also self-assess tax under new Division IV.1 during that period.

Subsection 220.05(1) Goods Brought Into a Participating Province

This new section provides for self-assessment in respect of certain tangible personal property (including mobile homes not affixed to land and floating homes) brought into a participating province from a non-participating province. The tax would apply, for example, where property is supplied outside a participating province and then brought into a participating province by a person for consumption, use or supply in that province, subject to certain exclusions.

The circumstances in which this tax is payable generally parallel those in which the goods would be taxable if they were imported into Canada. The self-assessment rules ensure that the provincial portion of the HST does not provide an incentive for consumers in the participating provinces to acquire property outside of those provinces.

In the case of "prescribed property" (to be defined by regulation) or "specified motor vehicles" (as newly defined in subsection 123(1) to include most registrable motor vehicles), the tax will be calculated on a prescribed value. The rules providing for valuation will be set out in regulations and, in the case of motor vehicles, will generally provide for valuation in accordance with the value assigned by the relevant provincial licensing authority. The regulations will also provide for any special valuation rules applicable to other "prescribed property".

In the case of property, other than specified motor vehicles and prescribed property, acquired by an arm's-length sale, the tax will be calculated on the lesser of the value of the consideration paid or payable for the supply and the fair market value of the property at the time it is brought into a participating province. In any other case, (i.e., where the property was acquired in a non-arm's-length sales transaction), the tax will be based on the fair market value of the property at the time it is brought into a participating province.

Subsection 220.05(2) When Tax Payable

The tax imposed under subsection 220.05(1) in respect of property other than specified motor vehicles will become payable at the time the property is brought into a participating province. In the case of specified motor vehicles, the tax will be payable to the Receiver General but collected by provincial licensing authorities. This tax becomes payable at the time the vehicle is registered in the participating province or the day on or before which it is required to be registered, whichever is earlier.

Subsection 220.05(3) Non-taxable Property

Although subsection 220.05(1) provides for a general requirement to self-assess where tangible personal property is brought into a participating province from a non-participating province, by virtue of subsection 220.05(3), this requirement does not apply in respect of property included in Part I of Schedule X to the Act. For the most part, that Part provides for relief from the provincial portion of the HST in circumstances in which the property would be relieved from GST if it were imported into Canada. (For further details, see the commentary on new Schedule X.)

Tax under subsection 220.05(1) also will not be payable where tax under new section 220.06 was paid by the recipient of a supply of the property upon the property being brought into a participating province, or where tax under new section 220.07 was self-assessed on the importation of the property as commercial goods (within the meaning of new subsection 212.1(1)).

Subsection 220.06(1) Supply by Unregistered Non-resident

The rule in section 220.06 ensures that the provincial portion of the HST applies to property acquired in a participating province from an unregistered, non-resident of Canada who is not required to collect tax. The section imposes a requirement for the recipient of a supply in these circumstances to self-assess the provincial portion of the HST.

Where the property is "prescribed property" (to be defined by regulation) or a "specified motor vehicle" (as newly defined in subsection 123(1)), the tax is calculated on the prescribed value.

The rules providing for valuation will be set out in regulations and, in the case of motor vehicles, will generally provide for valuation in accordance with the value assigned by the relevant provincial licensing authority. The regulations will also provide for any special valuation rules applicable to other "prescribed property".

In the case of property, other than specified motor vehicles and prescribed property, that is acquired by way of an arm's-length sale, the tax will be calculated on the lesser of the value of the consideration paid or payable for the supply and the fair market value of the property at the time it is brought into a participating province. In any other case (i.e., where the property was acquired by way of a non-arms-length sales transaction), the tax will be calculated on the fair market value of the property at the time it is brought into a participating province.

Subsection 220.06(2) When Tax Payable

The tax imposed under subsection 220.06(1) in respect of property other than specified motor vehicles will become payable at the time the property is brought into a participating province. In the case of specified motor vehicles, the tax will be payable to the Receiver General but collected by provincial authorities. This tax will become payable at the time the vehicle is registered in the participating province or the day on or before which it is required to be registered, whichever is earlier.

Subsection 220.06(3) Non-taxable Property

Subsection 220.06(3) describes the circumstances in which the requirement to self-assess tax under subsection 220.06(1) does not apply. This will be the case, for example, in respect of property included in Part I of new Schedule X to the Act. For the most part, that Part provides for relief from the provincial portion of the HST in circumstances in which the property would be relieved from GST if it were imported into Canada. In addition, self-assessment under subsection 220.06(1) will not be required where tax under section 220.05 was paid by the non-resident supplier at the time the property was brought into the participating province or where tax under section 220.07 was self-assessed on the importation of the goods as commercial goods (within the meaning of new subsection 212.1(1)).

Subsection 220.07(1) Imported Commercial Goods

The existing tax under Part IX of the Act on imported goods is levied under Division III of that Part and collected by Canada Customs at the time of importation, as if the tax were a duty levied under the *Customs Tariff*. However, amended Division III imposes the provincial portion of the HST only in respect of certain non-commercial importations by residents of participating provinces. The tax under new section 212.1 does not apply to importations by non-residents of a participating province or to any commercial importations because, in those cases, it would be very difficult for Canada Customs to determine the destination of the goods at the time of importation.

New subsection 220.07 imposes a requirement to self-assess the provincial portion of the HST in respect of most taxable importations of goods into the participating provinces where the goods are not subject to tax under Division III. There will be a requirement to self-assess the tax in respect of such goods that are, for Customs purposes, accounted for as "commercial goods" within the meaning assigned by subsection 212.1(1), and motor vehicles that are required to be registered under the laws of the province relating to the registration of motor vehicles.

Certain exceptions from self-assessment under this section are set out in new subsection 220.07(2).

Subsection 220.07(2) Exception

As is the case for the provincial portion of the HST imposed on imports under new section 212.1 in Division III, there will be no requirement to self-assess the tax under subsection 220.07(1) in respect of the importation of a mobile or floating home that has been used or occupied in Canada by individuals as a place of residence, or in respect of the importation of goods that are included in Schedule VII.

In addition, there will be no requirement to self-assess the tax in respect of goods (other than specified motor vehicles) that are imported by a registrant for consumption, use or supply exclusively in the course of commercial activities of the registrant, provided that the registrant is neither a charity who is using the simplified accounting method set out in section 225.1 (added by subclause 45(1)), nor a registrant whose net tax is determined under the "Streamlined Accounting Quick Method" or the "Special Quick Method For Public Service Bodies" set out in Parts IV and V respectively of the *Streamlined Accounting (GST) Regulations*.

Subsection 220.07(3) Value of Goods

Where property is "prescribed property" (to be defined by regulation) or a "specified motor vehicle" (as newly defined in subsection 123(1)), the tax under subsection 220.07(1) is calculated on the prescribed value. The rules providing for valuation will be set out in regulations and, in the case of motor vehicles, will generally provide for valuation in accordance with the value assigned by the relevant provincial licensing authority. The regulations will also provide for any special valuation rules applicable to other "prescribed property".

In the case of property other than specified motor vehicles or prescribed property, the tax will be calculated on the excise and duty-paid value of the goods, in accordance with section 215.

Subsection 220.07(4) When Tax Payable

The tax imposed under subsection 220.07(1) in respect of property other than specified motor vehicles will become payable at the time the property is brought into a participating province. In the case of specified motor vehicles, the tax will be payable to the Receiver General but collected by provincial authorities. That tax will become payable at the time the vehicle is registered in the participating province or the day on or before which it is required to be registered, whichever is earlier.

Subsection 220.08(1) Intangible Property and Services

New section 220.08 provides for self-assessment by persons who are residents of a participating province and who are the recipients of certain taxable supplies of intangible personal property or services when these are acquired for consumption, use or supply primarily in the participating provinces. The circumstances in which this tax is payable generally mirror those in which tax would apply if the supplies were imported taxable supplies under section 218 in Division IV.

Tax will be payable under subsection 220.08(1) each time an amount of consideration for the supply is paid or becomes due, and will be calculated on the value of that consideration at that time, multiplied by the extent (expressed as a percentage) to which the person acquired the property or service for consumption, use or supply in participating provinces.

Subsection 220.08(2) When Tax Payable

The tax under subsection 220.08(1) calculated on an amount of consideration becomes payable at the time that consideration becomes due or is paid without having become due.

Subsection 220.08(3) Non-taxable Supplies

Tax under subsection 220.08(1) is not payable in respect of a supply that is included in Part II of new Schedule X. For the most part, that Part mirrors relevant exclusions from the definition "imported taxable supply" in section 217. However, some of the exclusions from the latter definition are not required for purposes of section 220.08 because of the test of primary use contained in this section which is not found in section 217. (For further details, see the commentary on Schedule X).

Subsection 220.09(1) Returns and Payment of Tax

Subsection 220.09(1) sets out the general rules regarding the manner in which tax imposed under Division IV.1 must be reported and paid.

Where tax becomes payable by a registrant during a reporting period in respect of a supply of property other than a "specified motor vehicle" (as newly defined in subsection 123(1)), that tax must be reported in the return required under section 238 to be filed for that reporting period and the tax must be paid on or before the due date for that return. Where tax is payable by a non-registrant in respect of a supply of such property, the tax must be reported in the prescribed return filed in prescribed manner and containing prescribed information and the tax must be paid on or before the last day of the month following the calendar month in which the tax became payable under Division IV.1.

Subsection 220.09(2) Exception for Specified Motor Vehicles

An exception to the general reporting and payment requirements is provided in new subsection 220.09(2) in respect of tax payable under Division IV.1 on a supply of a "specified motor vehicle" (as newly defined in subsection 123(1)).

In these circumstances, the tax is not required to be reported in any return, and it must be paid at the time the person registers the vehicle or the day on or before which the vehicle is required to be registered, whichever is earlier. Although the tax is payable to the Receiver General, it will be collected by provincial registration authorities on behalf of Revenue Canada.

Subsection 220.09(3) Deduction for Prescribed Amount

New subsection 220.09(3) provides the mechanism for delivering the provincial rebate in respect of the provincial component of the HST on printed books and other qualifying publications referred to in new subsection 259.1 that are brought into a participating province. The delivery mechanism for sales made in the participating provinces is provided under new subsection 234(3). Under that subsection, a registrant may, in calculating net tax for a reporting period, deduct a prescribed amount which has been paid to or credited in favour of the recipient of a supply of a printed book or other qualifying publication. In that way, the recipient may obtain the benefit of the rebate at the time of purchase. Subsection 220.09(3) provides for a similar result in respect of tax imposed under Division IV.1. Where an amount of tax is payable under that Division and the amount is a prescribed amount for purposes of subsection 234(3), the amount may be deducted in determining the total amount of tax under Division IV.1 which is required to be reported and paid.

Subsection 220.09(4) No Return Required

Subsection 220.09(4) provides that where the amount of tax required under subsection 220.09(1) to be reported or paid is nil (i.e., as a consequence of a deduction having been taken under subsection 220.09(3)), no return need be filed under Division IV.1.

Clause 206

Disclosure of Tax

ETA
223

Existing section 223 requires a registrant who makes a taxable supply to disclose, normally in the invoice or receipt for the supply, the amount of tax on the supply or the fact that the total amount charged includes tax. The latter option would not readily enable the recipient to determine the actual amount of tax charged without an additional indication of the rate of tax and, where the invoice is for a mix of taxable and non-taxable items, which items are subject to tax. Therefore, section 223 is amended to require the supplier to indicate either the total tax payable in respect of the supply or both the tax rate and the items that are taxable.

This amendment comes into force on April 7, 1997.

Clause 207

Net Tax

ETA
225(5)

This subsection restricts the ability of a registrant to claim in input tax credit in respect of property or a service acquired or imported as an improvement to real property. This subsection is amended to add a reference to an improvement brought into a participating province since that is another occurrence that may result in tax becoming payable for which an input tax credit would be sought and to which this subsection should apply.

This amendment comes into force on April 1, 1997.

Clause 208

Net Tax of Charity Under Streamlined Accounting Method

ETA
225.1(2)

New section 225.1 provides for a new streamlined accounting method for charities (see commentary on subclause 45(1)). Under that method, a charity is entitled to claim input tax credits in respect of property imported or purchased for use as capital property of the charity. Subsection 225.1(2) is amended as a consequence of the fact that the HST will apply in some cases to property brought into a participating province. Subparagraph (*a*)(ii) of the description of element B of the formula in subsection 225.1(2) is amended to refer also to tax payable upon bringing property into a participating province.

Under the streamlined accounting method, only 60 per cent of the tax in respect of most supplies (other than of capital or real property) made by a charity is required to be included in determining the net tax remittable by the charity, given that the charity does not claim input tax credits under this method for its inputs (other than capital inputs) used in making the supplies. Accordingly, only 60 per cent of any special deductions from net tax in respect of those supplies is deductible in determining net tax under this method. The allowable deductions are listed in paragraph (*b*) of the description of element B in the net tax formula set out in subsection 225.1(2). The paragraph is amended to add a reference to the newly-added deduction under subsection 234(3) (see commentary on clause 215).

These amendments are effective April 1, 1997.

Clause 209

Selected Listed Financial Institutions

ETA
225.2(1) to (4)

New subsection 225.2(1) sets out criteria for determining who is a selected listed financial institution for the purposes of Part IX of the Act.

A person is a selected listed financial institution during a fiscal year if the person meets two conditions.

- First, the person must be a listed financial institution described in any of subparagraphs 149(1)(*a*)(i) to (x) during the taxation year in which the fiscal year ends and during the preceding taxation year. A person who is a deemed listed financial institution solely because of a section 150 election for exempt supplies does not qualify as a selected listed financial institution.

- Second, the person generally must have been required to allocate taxable income (or, in the case of an individual, income) to both a participating and a non-participating province in each of those taxation years. Alternatively, the person must either be a specified partnership described in subsection 225.2(4) in each of those taxation years or a prescribed financial institution.

Paragraph 225.2(1)(*a*) sets out the allocation test for corporations, such as chartered banks, insurance companies and trust and loan corporations. The corporation must be required under sections 402 to 405 of the *Income Tax Regulations* to allocate taxable income to a participating province and a non-participating province during each of the two relevant taxation years. For taxation years in which the corporation did not have taxable income, the test is whether the corporation would have been required to allocate taxable income to a participating province and a non-participating province if the corporation had taxable income in that year.

Paragraph 225.2(1)(*b*) sets out the allocation test for individuals, estates of a deceased individual and trusts. The person must be required under section 2603 of the *Income Tax Regulations* to allocate income to a participating province and a non-participating province during each of the two relevant taxation years. For taxation years in which the person did not have income, the test is whether the person would have been required to allocate income to a participating province and a non-participating province if the person had income in that year.

For HST purposes, the income allocation formulas prescribed by the *Income Tax Regulations* are used solely to determine whether or not a person is a selected listed financial institution. The allocation percentages used in the formula under subsection 225.2(2) will be determined by a method set out in regulations made under the *Excise Tax Act*.

This amendment becomes effective on April 1, 1997.

Subsection 225.2(2) Adjustment to Net Tax

New subsection 225.2(2) requires a financial institution to make an adjustment to its net tax for each reporting period during which it is a selected listed financial institution. This adjustment is required because selected listed financial institutions are not required to pay the provincial component of the HST under new section 218.1 or new Division IV.1 and they generally cannot claim input tax credits in respect of the provincial component payable under new subsection 165(2) or new section 212.1. The adjustment compensates for these departures from the standard HST rules.

The first step in calculating the amount of the adjustment is to calculate the financial institution's unrecoverable GST for the period at the 7 per cent rate. This amount is determined by totalling all of the GST that became payable by the financial institution during the period, all of the GST that was paid by financial institution during the period without having become payable and any other GST that would have become payable by the financial institution during the period if it had not made any elections under section 150. From this amount is subtracted all input tax credits properly claimed in the return for the period and all amounts that the financial institution could have claimed as input tax credits for the period if the section 150 elections had not been made. The net amount determined by these calculations is the financial institution's unrecoverable GST for the period.

To determine the unrecoverable GST for a reporting period, the financial institution must segregate the 7 per cent GST that applied to its purchases from the provincial component of the HST. However, the tax collected or collectible on supplies need not be separated into the GST and provincial components for purposes of the net tax calculation.

The second step in the calculation is to gross up the unrecoverable GST by 8/7ths and multiply the result by the financial institution's allocation percentage for each participating province. The allocation percentage is determined for each taxation year in accordance with a method prescribed by regulations made under the *Excise Tax Act* and applies to all reporting periods in fiscal years ending in that taxation year. The method for determining the financial institution's allocation percentages will generally parallel the rules in sections 402 to 405 and 2603 of the *Income Tax Regulations* that apply to the financial institution, except that income earned outside Canada will not be taken into account. Special rules will also be developed for determining a partnership's allocation percentages, since partnerships are not taxpayers for income tax purposes and are not required to allocate the partnership's income in accordance with the *Income Tax Regulations*.

The third step in the calculation is determine for each participating province, the total provincial component of the HST that became payable by the financial institution during the period or was paid by financial institution during the period without having become payable in respect of supplies made in the province to the financial institution and in respect of goods imported into Canada for use in the participating province.

The amount allocated to a participating province for the period under the second step is then compared to the total provincial component of the HST relating to that province that was paid or payable by the financial institution during the period as determined under the third step. Where the amount allocated exceeds the amount paid or payable, the excess must be added in determining the financial institution's net tax for the period. Where the amount paid or payable exceeds the amount allocated, the excess may be deducted in determining the net tax.

Specific adjustments to the calculation will be provided for in the regulations to take exceptional circumstances into account, such as adjustments of tax made under section 232. Transitional adjustments may also be set out in the regulations.

Financial institutions will not be required to calculate separate net tax adjustments under subsection 225.2(2) for each of the participating provinces, because the tax rates for the participating provinces are all the same as of April 1, 1997.

This amendment becomes effective on April 1, 1997. However, for the purpose of determining the net tax of a selected listed financial institution for a reporting period that begins before April 1, 1997 and ends on or after that date, the net tax will be prorated according to the proportion of the days in the reporting period that are after March 1997.

Subsection 225.2(3) Exclusions from Adjustment

New subsection 225.2(3) excludes certain amounts of tax and certain input tax credits from the calculation under subsection 225.2(2).

Selected listed financial institutions are deemed in certain cases to have paid tax equal to the basic tax content of property under subsections 129.1(5), 171(1), 171.1(2), 206(2) and (3) and 208(2) and (3). Because of the difficulty in distinguishing between the 7 per cent and 8 per cent components of basic tax content, the taxes deemed to have been paid under those subsections are excluded from the calculation under subsection 225.2(2). Accordingly, selected listed financial institutions are permitted to claim input tax credits in respect of the provincial component of these deemed taxes under new subsection 169(3). They are also permitted to claim the input tax credits in respect of the provincial component allowed under subsections 193(1) and (2), which are also based on basic tax content. These input tax credits are also excluded from the calculation under subsection 225.2(2).

This amendment becomes effective on April 1, 1997.

Subsection 225.2(4) Meaning of "specified partnership"

New subsection 225.2(4) defines the phrase "specified partnership". Under new subsection 225.2(1), a partnership is a selected listed financial institution during a fiscal year if the partnership is a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) during the taxation year in which the fiscal year ends and during the preceding taxation year and the partnership is a "specified partnership" during those two years.

A partnership is a specified partnership during a taxation year if it has at least one member who has taxable income (or income in the case of a member that is a individual, estate or trust) in that year earned in a participating province from a business carried on through the partnership and at least one member (whether or not the same member) who has taxable income (or income in the case of a member that is a individual, estate or trust) in that year earned in a non-participating province from such a business. The rules set out in sections 402 to 405 and section 2603 of the *Income Tax Regulations* generally apply for the purpose of determining in which provinces a member of the partnership earned its income from the partnership. However, where a member of the partnership is a second partnership, section 402 of the regulations applies as if the second partnership were a corporation and a taxpayer for purposes of the Income Tax Act. In addition, where the members do not have income or taxable income in the year from the partnership business, the determination is made as if the members had income or taxable income from the partnership.

This amendment becomes effective on April 1, 1997.

Clause 210

Returnable Containers

ETA
226

Section 226 sets out the rules for the simplified method of accounting for returnable beverage containers.

Subclause 210(1)

Input Tax Credits for Returnable Containers

ETA
226(4)

Subsection 226(4) sets out the general rule that a registrant may not claim an input tax credit (whether actual or notional) with respect to tax paid or payable on purchases of returnable containers. Subsection 226(4) is amended to add that a registrant may not claim an input tax credit with respect to tax paid or payable by the registrant on returnable containers brought into a participating province. This amendment is consequential to the introduction of self-assessment rules in new Division IV.1 relating to the imposition of the provincial component of the HST in participating provinces.

The amendment is effective April 1, 1997.

Subclause 210(2)

Change in Practice

ETA
226(6)

Subsection 226(6) applies to a registrant who ceases to quality to follow the simplified rules for accounting for supplies of returnable containers under subsection 226(4) (e.g., the registrant falls within one of the exceptions set out in subsection 226(5)). Subsection 226(6) deems a registrant in this case to have reacquired and paid tax on containers held at that time in order to allow the registrant to claim an input tax credit calculated on the price paid on the acquisition of the containers. Subsection 226(6) is amended to add that the registrant may claim an input tax credit in respect of tax that was self-assessed upon bringing the container into a participating province after it was last acquired. This amendment is consequential to the addition of the self-assessment rules found in new Division IV.1.

Also, subsection 226(6) is amended so that the tax the registrant is deemed to have paid in respect of the deemed acquisition is equal to the "basic tax content" of the container at that time. The term "basic tax content" is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

The amendment is effective April 1, 1997.

Subclause 210(3)

Change in Practice

ETA
226(7)

Subsection 226(7) deals with registrants who become eligible to use the simplified method of accounting for returnable containers. These registrants will have claimed input tax credits for tax paid on their last acquisition of returnable containers. Subsection 226(7) is amended to add a reference to an input tax credit in respect of tax that became payable upon bringing the container into a participating province after it was last acquired. This amendment is consequential to the introduction of self-assessment rules in new Division IV.1.

Paragraph 226(7)(*a*) is amended to specify that the registrant is deemed to have collected tax equal to the "basic tax content" of the containers. The term "basic tax content" is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

The amendment is effective April 1, 1997.

Clause 211

Calculation of Net Tax and Remittance

ETA
228

Subclauses 211(1) and (2)

Calculation of Net Tax and Remittance

ETA
228(1) and (2)

These subsections are amended so as not to apply where new subsection 228(2.1) or (2.2) applies, which provide special reporting and remittance rules for selected listed financial institutions, as defined in new subsection 225.2(1).

These amendments apply to reporting periods that end after March 1997.

Subclause 211(3)

Selected Listed Financial Institutions – Returns and Remittance

ETA
228(2.1) to (3)

Subsection 228(2.1) Interim Return and Remittance

New subsection 228(2.1) requires a selected listed financial institution (as defined in new subsection 225.2(1)) that is a monthly or quarterly filer to make an interim payment on account of net tax for the period. The payment must be made on or before the due date of the interim return for the period required under new subsection 238(2.1). Annual filers are not required to file interim returns because they pay quarterly instalments on account of their net tax.

Generally, a selected listed financial institution's interim net tax payment for a reporting period is calculated in the same way as its net tax for the period. However, in calculating the adjustment to net tax under new subsection 225.2(2) relating to the provincial portion of the HST payable on its purchases, the financial institution may use an allocation percentage for each participating province equal to the lesser of its allocation percentage for the current taxation year and its allocation percentage for the immediately preceding taxation year. Where the interim net tax for the reporting period is a positive amount, the financial institution must pay that amount on account of its net tax for the period. Where the interim net tax is negative, the financial institution may claim it as an interim net tax refund under new subsection 228(2.4).

The interim net tax must reconciled with the actual net tax for the reporting period in the financial institution's final return for the period filed under subsection 238(2.1). Details of the reconciliation are set out in new subsection 228(2.3).

Subsection 228(2.2) Interim Returns in the First Fiscal Year

New subsection 228(2.2) establishes a transitional method for calculating the interim net tax of a financial institution for each of the reporting periods that end in the fiscal year in which it becomes a selected listed financial institution. The method does not apply for fiscal years that begin before April 1997.

The transitional interim net tax calculation is generally the same as the standard interim net tax calculation under new subsection 228(2.1). However, in calculating the adjustment to net tax for a reporting period under new subsection 225.2(2), the allocation percentages for the participating provinces are equal to the financial institution's allocation percentages for the preceding reporting period.

Subsection 228(2.3) Final Return

A selected listed financial institution that is a monthly or a quarterly filer is required by new subsection 238(2.1) to file a final return for each reporting period during a fiscal year within three months after the end of the fiscal year. New subsection 228(2.3) sets out the amounts that the financial institution must report in the final return. These amounts include the financial institution's net tax for the reporting period, the amount of any interim net tax payments paid for the period and any amount claimed as an interim net tax refund for the period.

New subsection 228(2.3) also requires the selected listed financial institution to remit its net tax for the period on or before the due date of the final return for the period. Thus, where the final net tax exceeds the interim net tax payments for the period, the excess must be remitted by the due date. Also, where the financial institution claimed an interim net tax refund that exceeds the final net tax refund (if any) to which the person is entitled for the period, the excess must be repaid to the Receiver General on or before the due date of the final return.

Subsection 228(2.4) Interim refund

New subsection 228(2.4) allows a selected listed financial institution that is a monthly or quarterly filer to claim any negative interim net tax for a reporting period as an interim net tax refund. The refund may be claimed in the interim return for the reporting period, but the interim return must be filed on or before the due date of the final return for the period.

Subsection 228(3) Net tax refund

Existing subsection 228(3) permits a person to claim a net tax refund for a reporting period in the person's return for the reporting period.

Amended subsection 228(3) permits a selected listed financial institution to claim its net tax refund for a reporting period in its final return for the period to the extent that it was not claimed as an interim net tax refund.

These amendments apply to reporting periods that end after March 1997.

Subclause 211(4)

ETA
228(6) and (7)

These subsections refer to provisions under which amounts are required to be remitted or paid. They are amended to add references to new subsections 228(2.1) and (2.3) and new Division IV.1 which also provide for such requirements.

These amendments apply to reporting periods ending after March 1997.

Clause 212

Restriction

ETA
229(2)

Under existing subsection 229(2), a net tax refund for a particular reporting period of a person may not be paid to the person until the person files all returns required to be filed under Division V for the period and for all preceding reporting periods of the person. The subsection is amended to provide, under new paragraph 229(2)(*a*), that, in the case of an interim net tax refund, that refund may not be paid until all returns required to be filed under Division V by the person for all preceding reporting periods are filed. Interim net tax refunds may be claimed under new subsection 228(2.4) by selected listed financial institutions (as newly defined in subsection 123(1)) that are required to determine their net tax in accordance with new section 225.2 (see commentary on that section under clause 209).

This amendment is effective April 1, 1997.

Clause 213

Refund of Payment

ETA
230(1)

Existing subsection 230(1) requires the Minister of National Revenue to refund an overpayment of net tax for a reporting period with all due dispatch after the return for the period is filed.
Subsection 230(1) is amended by subclause 48(1) so that the provision applies to instalments or any other payment made by the person on account of net tax for the particular reporting period.

Subsection 230(1) is further amended to apply to an amount of interim net tax paid by a selected listed financial institution (as newly defined in subsection 123(1)) that is determining its net tax in accordance with the rules set out in new section 225.2 (see commentary on that section under clause 209). If the person had remitted an amount that exceeds the amount of interim net tax remittable by the person for a particular reporting period, the Minister will refund the excess to the person with all due dispatch if the person claims a refund of that excess in a final return. Therefore, a person who had paid an excess amount on account of interim net tax for a particular reporting period should not claim that excess amount as a refund in a subsequent interim return but should claim a refund in the final return.

This amendment is effective April 1, 1997.

Clause 214

Patronage Dividends

ETA
233

Section 233 sets out the rules whereby registrants issuing patronage dividends can choose to treat the dividends as not reducing the value of consideration for any supplies made to the dividend recipients or as price adjustments in respect of such supplies. If the registrant chooses the latter treatment, the registrant has the further option of either identifying the actual portion of each dividend that relates to taxable supplies, other than zero-rated supplies, made in Canada to the dividend recipient or using a formula set out in the section to estimate this portion (referred to as the "specified amount").

Existing paragraph 233(2)(*a*) provides that the amount by which the registrant is considered to have reduced the consideration for supplies made to the dividend recipient is equal to an amount determined under the paragraph by reference to the "consideration fraction". The definition of that term in subsection 123(1) is repealed given that it does not take account of the 15-per-cent HST rate applicable to supplies made in the participating provinces. Therefore, the paragraph is amended by replacing the reference to "consideration fraction" with a reference to the fraction 100/107.

Where the dividend relates to supplies made in participating provinces, the consideration for the supplies is considered to be further reduced by the amount determined under new paragraph 233(2)(*a*.1). If the registrant has opted to determine the actual portion of each dividend attributable to taxable supplies, other than zero-rated supplies, the amount deemed to be the further reduction in consideration is determined by multiplying the fraction 100/115 by the actual portion of the dividend that relates to such taxable supplies made in participating provinces. When the registrant has chosen to use the specified amount, the deemed reduction in consideration under new paragraph (*a*.1) is determined by multiplying 100/115ths of the specified amount by the fraction that the part of the dividend that may reasonably be regarded as being in respect of supplies made in the participating provinces represents of the total dividend.

Subsections 233(4) and (5) relating to the timing of an election and its revocation are amended to refer to the renumbered provisions of subsection 233(2) that are cross-referenced.

These amendments come into force on April 1, 1997.

Clause 215

Deduction in Respect of Supply in a Participating Province

ETA
234(3) and (4)

New subsection 234(3) allows registrants who make supplies in a participating province to deduct, in determining their net tax, an amount equal to the prescribed amount they pay or credit to recipients on account of the tax payable on certain supplies. The "prescribed amount" is equal to the provincial component of the HST, as determined under new subsection 165(2).

This subsection provides the mechanism for delivering the provincial rebate in respect of the provincial component of the HST on printed books and other qualifying publications referred to in new section 259.1 (added by subclause 69.1(1)) at the time of purchase.

New subsection 234(4) ensures that, since the crediting to a recipient of a prescribed amount reduces the tax paid by the recipient, the recipient is not entitled to claim the amount credited as an input tax credit, rebate or remission.

New subsections 234(3) and (4) come into force on April 1, 1997.

Clause 216

Net Tax Where Passenger Vehicle Leased

ETA
235(1)

The purpose of section 235 is to recapture input tax credits in respect of leased passenger vehicles where the lease costs exceed the maximum lease costs that are deductible under the *Income Tax Act*. Existing subsection 235(1) treats the lease of a passenger vehicle as one supply. However, under new subsection 136.1(1) a separate supply is deemed to have been received by the lessee for each lease interval the vehicle is leased (see commentary on subclause 155(1)). Therefore, in most cases, a lease of a passenger vehicle would involve more than one supply. Consequently, subsection 235(1) is amended to ensure that it applies to all supplies of a passenger vehicle made under a lease.

This amendment is effective on April 1, 1997.

Clause 217

Instalments

ETA
237

Subclause 217(1)

Instalments

ETA
237(1)

Existing subsection 237(1) requires registrants who are annual filers to pay quarterly instalments on account of their net tax for a reporting period equal to 1/4 of the registrant's instalment base for the period as determined under subsection 237(2). The instalments must be paid within one month after the end of each fiscal quarter in the reporting period.

Under amended subsection 237(1), where a registrant that is an annual filer becomes a selected listed financial institution during a reporting period, its instalments for the period are equal to the amounts determined under new subsection 237(5).

This amendment is effective on April 1, 1997.

Subclause 217(2)

Selected Listed Financial Institution - Instalments in First Fiscal Year

ETA
237(5)

New subsection (5) provides a transitional method for determining the instalments payable by a financial institution that is an annual filer for the fiscal year in which it becomes a selected listed financial institution. The transitional method does not apply to fiscal years that begin before April 1997. The method for determining instalments for that year is set out in new subsection 363(2) (see commentary on clause 241).

Under the transitional method, the financial institution's first instalment for the year is equal to 1/4 of its instalment base for year as determined under subsection 237(2). Thus, the first instalment must be equal to the lesser of 1/4 of its net tax for the year and 1/4 of its total net tax for all reporting periods ending in the preceding 12 month period.

For each of the remaining fiscal quarters in the year, the financial institution's required instalment is equal to the lesser of 1/4 of its net tax for the year and the amount determined under the formula in new subparagraph 237(5)(*b*)(ii). The amount under the formula is equal to 1/4 of the financial institution's total net tax for all reporting periods ending in the preceding 12 month period determined without reference to the provincial component of the HST, grossed up by the total of the financial institution's allocation percentages for the participating provinces for the preceding fiscal quarter, as determined under the regulations.

This amendment is effective on April 1, 1997.

Clause 218

Filing by Certain Selected Listed Financial Institutions

ETA
238(2.1)

Generally, monthly and quarterly filers are required by subsections 238(1) and (2) to file their returns within one month after the end of each reporting period.

However, new subsection (2.1) requires a selected listed financial institution that is a monthly or quarterly filer to file an interim return for each reporting period within one month after the end of the reporting period and to file a final return within three months after the end of the fiscal year in which the reporting period ends.

This amendment applies to reporting periods that end after March 1997.

Clause 219

Registration Permitted

ETA
240(3)(*d*)

This paragraph refers to a corporation that would be permitted to register for purposes of the tax under Part IX and thereby be in a position to claim input tax credits in respect of expenses incurred in the course of commercial activities (section 186 deems certain expenses to have been incurred by such a corporation in the course of commercial activities). One of the conditions for registration is that all or substantially all of the property of a subsidiary or prospective subsidiary of the corporation must have been acquired or imported for consumption, use or supply in the course of commercial activities. The amendment clarifies that it is the "last" acquisition or importation that is relevant. For example, under new section 136.1, a person is deemed to have acquired leased property at the beginning of each period (referred to as a "lease interval") to which a lease payment is attributable. The use to which the leased property is put might change from one lease interval to the next. It is the intended use at the beginning of the last such lease interval with which subsection 240(3) is concerned.

Clause 220

Rebate in Respect of Foreign Conventions

ETA
252.4

Subsection 252.4 provides for rebates of tax paid on supplies or importations of convention supplies and supplies of the use of convention facilities.

The section is amended, in both the English and French versions of the Act, to make reference also to property brought into a participating province since that is another occurrence that could result in tax becoming payable (under new Division IV.1) for which a rebate would be sought.

The amendments come-into-force on April 1, 1997.

Clause 221

Employee and Partner Rebates

ETA
253

Section 253 provides for the payment of rebates to employees and partners in respect of tax paid by them on certain property or services acquired or imported on their personal account and for which they can deduct an amount for income tax purposes. The section is amended to also refer to such property brought into a participating province since that is another occurrence that could result in tax becoming payable by the employee or partner for which a rebate would be sought. In addition, the description of element A of the formula in subsection 253(1) by which the amount of the rebate is determined is amended by replacing the reference to "tax fraction" with a reference to the fraction 7/107, 8/108 or 15/115, depending on whether the tax in question paid by the partner or employee was calculated at the rate of 7 per cent, 8 per cent or 15 per cent, respectively.

These amendments come into force on April 1, 1997.

Clause 222

New Housing Rebate

ETA
254

Section 254 provides for a partial rebate of the tax paid by an individual acquiring from a builder a single-unit residential complex or residential condominium unit that has been newly constructed or substantially renovated for use as a primary place of residence of the individual, a related individual or a former spouse of the individual.

Existing paragraph 254(2)(*d*) refers to the "total tax paid by the particular individual". The amendment to this paragraph adds the phrase "under subsection 165(1)" to ensure that the rebate in respect of tax calculated under that subsection is available in accordance with the current rules but that subsection 254(2) does not apply to the provincial component of the HST.

The amount of the rebate is determined under paragraph 254(2)(*h*) in certain cases specified therein. The amendment to the French version of this paragraph clarifies that the amount of tax to be factored into the calculation is the amount described in paragraph 256(2)(*d*) and referred to as "total de la taxe payée par le particulier".

New subsection 254(2.1) provides for a partial rebate of the tax paid under new subsection 165(2) (i.e., the provincial component of the HST) by qualifying purchasers of a single unit residential complex or a residential condominium unit that is for use in Nova Scotia as a primary place of residence. Where the purchaser of such a home is entitled to a rebate under subsection 254(2), or to be paid or credited the amount of such a rebate under subsection 254(4), or would be so entitled if the total consideration for the complex or unit were less than $450,000, the purchaser is eligible to claim a rebate, in addition to the rebate, if any, payable under subsection 254(2), equal to the lesser of $2,250 and 18.75 per cent of the provincial component of the HST in respect of the supply of the complex or unit and of any other supply to the purchaser of an interest in the complex or unit. It should be noted that, unlike the rebate provided for in subsection 254(2), this rebate is not reduced where the consideration for the complex or unit or for any other supply of an interest in the complex or unit is greater than $350,000.

Subsection 254(3), as amended by subclause 63(1), allows an individual up to two years to claim the new housing rebate from the time the individual acquires ownership of the residential complex. The amendment to this subsection is consequential to the addition of subsection 254(2.1) and ensures that the same limitation period applies in respect of the rebate provided for in that subsection.

Subsections 254(4) and (5) permit the builder of a qualifying residential complex, at the time of sale, to pay or credit the rebate to the purchaser. The amendments to these subsections are consequential to the addition of subsection 254(2.1) and ensure that purchasers who are entitled to a rebate under subsection 254(2.1) are similarly able to be paid or credited the rebate by the builder.

These amendments are effective April 1, 1997.

Clause 223

New Housing Rebate For Building Only

ETA
254.1

Section 254.1 provides for a rebate to an individual for tax paid in respect of the purchase of a building that forms part of a single unit residential complex or residential condominium unit where the individual leases from the builder of the complex or unit, on a long-term basis or with an option to purchase, the land on which the complex or unit is situated.

The amendments to paragraphs 254.1(2)(*a*) and (*h*) are consequential to the addition of new subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each period (referred to as a "lease interval") to which a lease payment is attributable (see commentary on clause 155).

New subsection 254.1(2.1) provides for a rebate in respect of the provincial component of the HST to qualifying purchasers of eligible homes that are situated in Nova Scotia. Where the purchaser is entitled to a rebate under subsection 254.1(2), or to be paid or credited the amount of such a rebate under subsection 254.1(4), or would be so entitled if the fair market value of the residential complex (i.e., land and building) were less than $481,500, the purchaser is eligible to claim a rebate, in addition to the rebate, if any, payable under subsection 254.1(2), equal to the lesser of $2,250 and 1.39 per cent of the total consideration payable for the building or any other structure that forms part of the building. It should be noted that, unlike the rebate provided for in subsection 254.1(2), this rebate is not reduced where the fair market value of the complex is greater than $374,500.

New subsection 254.1(2.2) replaces existing subsection 254.1(2.1), which provides that a rebate under section 254.1 is not available where the builder is exempt under another Act or law from the payment of tax in respect of a deemed supply under subsection 191(1). The new subsection ensures that the same restriction applies in respect of the rebate provided for in new subsection 254.1(2.1).

Subsection 254.1(3), as amended by subclause 64(4), allows an individual up to two years from the time the individual takes possession of the complex to claim the rebate under section 254.1. The amendment to this subsection is consequential to the addition of new subsection 254.1(2.1) and ensures that the same limitation period applies in respect of the rebate provided for in that subsection.

Subsection 254.1(4) permits the builder, at the time possession of the complex is transferred, to pay, or credit in favour of, the individual the amount of the rebate under section 254.1. The amendment to this subsection is consequential to the addition of new subsection 254.1(2.1) and ensures that purchasers who are entitled to a rebate under that subsection are similarly able to be paid or credited the rebate by the builder.

These amendments are effective April 1, 1997.

Clause 224

Co-operative Housing Rebate

ETA
255

Section 255 provides for a rebate to an individual in respect of the purchase of a share in a co-operative housing corporation for the purpose of using a new residential unit of the corporation as a primary place of residence of the individual, a related individual or a former spouse of the individual.

New subsection 255(2.1) provides for a rebate in respect of the provincial component of the HST to qualifying purchasers of a share in a co-operative housing corporation for the purpose of so using such a new residential unit that is situated in Nova Scotia. Where the purchaser is entitled to a rebate under subsection 255(2), or would be so entitled if the total consideration for the share or an interest in the corporation, complex or unit were less than $481,500, the purchaser is eligible to claim a rebate, in addition to the rebate, if any, payable under subsection 255(2), equal to the lesser of $2,250 and 1.39 per cent of the total consideration payable for the share or interest. It should be noted that, unlike the rebate provided for in subsection 255(2), this rebate is not reduced where the total consideration for the share or an interest in the corporation, complex or unit is greater than $374,500.

Subsection 255(3), as amended by subclause 65(1), allows an individual up to two years from the time ownership of the share is transferred to claim the rebate under section 255. The amendment to this subsection is consequential to the addition of new subsection 255(2.1) and ensures that the same limitation period applies in respect of the rebate provided for in that subsection.

These amendments are effective April 1, 1997.

Clause 225

Rebate for Owner-Built Homes

ETA
256

Section 256 provides a partial rebate of the tax paid by an individual who builds or substantially renovates his or her own primary place of residence or hires another person to do so.

Paragraph 256(2)(*c*) defines the "total tax paid by the particular individual", which is the amount that factors into the calculation of the rebate. This paragraph is amended to provide for a rebate in respect of the tax on improvements that are imported as well as imported mobile homes and floating homes. As well, the phrase "under subsection 165(1) and sections 212 and 218" is added to ensure that the rebate in respect of tax under those provisions is available in accordance with the current rules but that subsection 256(2) does not apply to the provincial component of the HST.

Paragraphs 256(2)(*e*) and (*f*) of the French version of the Act are also amended to clarify that the amount of tax to be factored into the calculation of the rebate is the amount described in paragraph 256(2)(*c*) of that version and referred to as "total de la taxe payée par le particulier".

New subsection 256(2.1) provides for a partial rebate of the provincial component of the HST in respect of a residential complex that is a mobile or floating home or a home that is constructed by an individual or that the individual engaged another person to construct, and that, in each case, is for use in Nova Scotia as the primary place of residence of the individual or a relation of the individual. Where the individual is entitled to a rebate for such a home under subsection 256(2), or would be so entitled if the fair market value of the home were less than $481,500, the individual is eligible to claim a rebate, in addition to the rebate, if any, payable under subsection 256(2), equal to the lesser of $2,250 and 18.75 per cent of the provincial component of the HST in respect of the supply of the land that forms part of the complex or interest therein and the supply to, or importation, or bringing into Nova Scotia, of any improvement to the qualifying home. It should be noted that, unlike the rebate provided for in subsection 256(2), this rebate is not reduced where the fair market value of the complex at the time of substantial completion is greater than $374,500 and is not available in respect of substantially renovated homes.

New subsection 256(2.2) replaces existing subsection 256(2.1), which allows a purchaser of a new mobile home to claim the owner-built rebate under section 256 thereby entitling the purchaser to a rebate for tax paid on the purchase of the land for the mobile home and for improvements to the land (including the mobile home itself). The new subsection ensures that the owner-built housing rebate under subsections 256(2) and (2.1) may similarly be claimed by qualifying individuals who import a mobile home or floating home, or bring into Nova Scotia a new mobile home or a new floating home from a non-participating province (as newly defined in subsection 123(1)). No rebate is required in respect of used mobile homes and floating homes purchased in Canada or brought into a participating province from a non-participating province since they are not subject to tax.

Subsection 256(3) sets out the time limits by which an individual must file an application for the rebate. The amendment to this subsection is consequential to the addition of new subsection 256(2.1) and ensures that the same limitation period applies in respect of the rebate provided for in that subsection.

These amendments are effective April 1, 1997.

Clause 226

Rebate to Owner of Land

ETA
256.1(1)

This section provides a rebate of tax to person who is an owner or lessee of certain residential land where the tax was paid by the person in purchasing or improving the land. Generally, the rebate is available where the land has been leased under exempt conditions to a person who will be required to self-assess the tax on the use of the land for residential purposes. The amount of the rebate is calculated according to a formula which takes into account the total tax charged and the amount of any rebates or input tax credits to which the person was entitled.

The description of element A of the formula is amended by adding a reference to tax payable in respect of improvements brought into a participating province since that is another occurrence that could result in tax becoming payable for which a rebate would be sought.

The amendment comes into force on April 1, 1997.

Clause 227

Non-registrant Sale of Real Property

ETA
257(1)

Section 257 provides a rebate of tax to a non-registrant who makes or is deemed to make a taxable supply of real property by way of sale. The rebate is determined by a formula that takes into account the tax the non-registrant paid on the purchase of the property and that was not recovered by the non-registrant by way of an input tax credit or rebate.

As a consequence of the introduction of the definition "basic tax content" in subsection 123(1) (see commentary on subclause 150(6)), the reference to the total tax charged in respect of the property is replaced with the reference to the basic tax content of the property.

The amendment applies to supplies of real property made on or after April 1, 1997.

Clause 228

Public Service Body Rebate

ETA
259

Section 259 of the Act entitles qualifying public service bodies to a rebate of the tax paid by them on inputs for which they are not entitled to claim an input tax credit. These amendments to section 259 come into force on April 1, 1997.

Subclause 228(1)

Definition "non-creditable tax charged"

ETA
259(1)

The term "non-creditable tax charged" is defined in subsection 259(1) and refers to amounts that the rebate applicant is or was required to pay as tax (net of input tax credits) and that are therefore potentially rebatable.

The definition "non-creditable tax charged" is amended to include tax in respect of property or a service brought into a participating province.

Subclause 228(2)

Rebate for Persons Other Than Designated Municipalities

ETA
259(3)

This subsection provides authority for the Minister of National Revenue to pay rebates to charities, qualifying non-profit organizations and selected public service bodies other than persons designated as municipalities under section 259. A similar rebate is available for the latter group under subsection 259(4).

This subsection is further amended to provide that the calculation of the rebate is subject to the rules set out in new subsection 259(4.2).

Subclause 228(3)

Rebate for Designated Municipalities

ETA
259(4)

This subsection provides authority for the Minister of National Revenue to pay rebates to organizations that are designated as municipalities in respect of certain activities for purposes of section 259.

This subsection is amended to provide that the calculation of the rebate is subject to the rules set out in new subsections 259(4.2) and 259(4.3)

In addition, the calculation of the rebate under subsection 259(4) in respect of property or a service for a claim period is amended such that it is expressed as the total of all amounts, each of which is determined by the formula in that subsection. This is done so that the test of the extent to which the property or service is for use in designated activities applies each time an amount of tax becomes payable in respect of that property or service, which could occur more than once within that same claim period.

For example, under new sections 136.1 and 136.2, a recipient of a supply of property by way of lease, licence or similar arrangement or of a service is deemed to have received a separate supply of the property or service for each period (referred to as a "lease interval" in the case of property or a "billing period" in the case of a service) to which a payment by the recipient is attributable. Calculating the rebate under subsection 259(4) as the total of the individual amounts of tax rebatable for the claim period properly takes account of situations where the intended use of such property or service in designated activities changes during a single claim period such that tax in respect of one lease interval or billing period may be rebatable to a different extent than the tax payable in respect of the same property or service for another lease interval or billing period in the claim period.

Subclauses 228(4) and (5)

Apportionment of Rebate

ETA
259(4.1)

This subsection, as enacted by subclause 69(7), is further amended to include a reference to the rules set out in new subsection 259(4.2). The other wording and structural changes in subsection 259(4.1) are strictly consequential to the restructuring of subsection 259(4) as explained above. There are no substantive changes to the rules under subsection 259(4.1).

Subclause 228(6)

Rebate in Respect of Tax in Participating Provinces

ETA
259(4.2)

New subsection 259(4.1) provides that the provincial component of the HST is not rebatable under section 259 except in the case of charities and qualifying non-profit organizations that are resident in any participating province (see new section 132.1 for rules regarding residency), selected public service bodies resident in Nova Scotia and municipalities resident in New Brunswick. Qualifying non-profit organizations resident in Newfoundland that are also designated municipalities under the section are subject to a special rule under new subsection 259(4.3).

New subsection 259(4.3) provides the rules for calculating a rebate under section 259 payable to a person that is a qualifying non-profit organization resident in Newfoundland and is also designated under section 259 to be a municipality in respect of certain activities. The rules essentially provide that the rebate payable to the organization is the aggregate of the rebate that would be payable if no provincial component of the HST were included in the calculation of the rebate and an additional amount representing a 50-per-cent rebate of the non-recoverable provincial component of the HST payable on inputs into the organization's activities other than the activities in respect of which it has been designated to be a municipality since municipalities in Newfoundland are not eligible for a rebate in respect of the provincial component of the HST.

Clause 229

No Adjustment of Provincial Component of Tax

ETA
259.1(6)

Subclause 69.1(1) adds new section 259.1, which provides for a rebate of the tax imposed under subsection 165(1) in respect of printed books and certain other publications acquried or imported by qualifying institutions. In addtition to this relief, all recipients of taxable supplies of those items made in a participating province are entitled to a rebate of the provincial portion of the HST. Under new subsection 234(3), the supplier that pays or credits the recipient the amount of the rebate of the provincial component of the tax (which will be a prescribed amount for the purposes of that subsection) is allowed to deduct the amount from the supplier's net tax. New subsection 259.1(6) ensures that no additional deduction from net tax may be claimed, and no addition to net tax will be required, under section 231 or 232 in the event that the consideration for the supply is subsequently adjusted by the supplier or is written off as a bad debt.

New subsection 259.1(6) is effective April 1, 1997.

Clause 230

Rebate for Property or Services Removed from a Participating Province

ETA
261.1 to 261.4

New sections 261.1 to 261.4 provide special rebates where property or services are supplied in a participating province and, in the case of tangible personal property, the property is removed, or in the case of intangible personal property or services, the property or services are for use, outside the participating provinces by certain persons that are not able to claim input tax credits.

Subsection 261.1(1) Rebate for Goods Removed

Subsection 261.1(1) provides a rebate for the provincial component of the HST paid on the purchase of eligible tangible personal property, mobile homes and floating homes by certain persons who remove the property from a participating province under specified circumstances. To qualify for the rebate, the person must generally be resident in Canada and not a consumer resident in a participating province. However, a consumer that is resident in a participating province may qualify, under this provision, for a rebate on a "specified motor vehicle" (as newly defined in subsection 123(1)).

In addition, to qualify for the rebate, the property must be for consumption, use or supply exclusively outside the participating provinces. The property must also be removed from a participating province to a non-participating province within 30 days after being delivered to the purchaser, and the purchaser must provide proof that any applicable provincial retail sales tax in the province to which the property is removed has been paid. Subsection 261.1(2) deals with property held in storage before being removed from the province.

This rebate does not apply to goods described in any of paragraphs 252(1)(*a*) to (*c*) (which relates to the rebate for goods exported from Canada by non-residents). Further, a "selected listed financial institution", as described in new subsection 225.2(1), is not eligible to claim a rebate under this provision because its purchases for use outside the participating provinces are factored into its net tax calculation under new section 225.2.

The rebate under subsection 261.1(1) is subject to the restrictions described in new section 261.4.

Subsection 261.1(2) Stored Goods

New subsection 261.1(2) provides that, for purposes of the rebate of the provincial component of the HST on property removed from a participating province, the period during which the property is held in storage after delivery and before being removed from the participating province is not to be taken into account in determining whether the goods are removed from the province within the 30-day time limit for removing the property.

Section 261.2 Rebate for Property Imported

Under new section 212.1 residents of participating provinces are generally required to pay the provincial component of the HST when importing taxable goods that are not accounted for as "commercial goods". New section 261.2 provides for a rebate of the provincial component of the HST paid on property that is imported at a place in a non-participating province and that is not for consumption use or supply in any participating province. This ensures that goods are not subject to provincial sales tax twice. For example, if a resident of a participating province flies into Toronto after a holiday abroad and leaves gifts with friends or relatives in Ontario before proceeding home to a participating province, the goods left in Ontario would be subject to the 15-per-cent HST upon importation. A rebate of the 8-per-cent provincial component of the HST paid under subsection 212.1(2) is available in these circumstances provided the person paid any taxes payable in the non-participating province (Ontario in this example).

A "selected listed financial institution", as described in new subsection 225.2(1), is not eligible to claim this rebate since importations of goods for use in non-participating provinces are factored into the net tax calculation of the institution under new section 225.2.

This rebate is also subject to the restrictions described in section 261.4.

Section 261.3 Rebate for Intangible Personal Property or Services

New section 261.3 provides for a rebate of the provincial component of the HST paid on supplies of intangible personal property or services to the extent that the property or service is acquired by the recipient of the supply for consumption, use or supply outside the participating provinces.

To qualify for the rebate, the recipient of the supply must be a resident of Canada. Also, the intangible personal property or service must be acquired by the recipient of the supply for consumption, use or supply primarily outside the participating provinces.

A "selected listed financial institution", as described in new subsection 225.2(1), is not eligible to claim this rebate because its purchases for use outside the participating provinces are factored into its net tax calculation under new section 225.2.

This rebate is also subject to the restrictions described in section 261.4.

Section 261.4 Restriction

Section 261.4 sets out several general restrictions relating to the rebates provided under sections 261.1, 261.2 and 261.3.

The rebate under section 261.1 for property purchased by a person and removed from a participating province will not be paid unless the person files an application for the rebate within one year after the day the person removes the property from the province. In the case of the rebate for imported goods under section 261.2 or for property or services under section 261.3, the rebate applicant must file an application for the rebate within one year after the day the tax became payable by the applicant.

In general, a person that is an individual is limited to one application per calendar quarter. Other persons are limited to one application per calendar month.

The provincial component of the HST must exceed $4 on each receipt for rebates under section 261.1 and 261.3. Also, the total of all rebates for which an application is made must be at least $16.

Sections 261.1 to 261.4 come into effect on April 1, 1997.

Clause 231

Restriction on Rebate

ETA
263

Section 263 provides that a person is not entitled to a rebate under Division VI of an amount of tax to the extent that the amount has otherwise been refunded, remitted or credited to the person, or to the extent that the person was otherwise entitled to an input tax credit in respect of the tax. The section is amended to include a reference to the rebates payable under new sections 261.1, 262.2 and 261.3 (see commentary on clause 230).

This amendment comes into force on April 1, 1997.

Clause 232

Distribution by Trust

ETA
269

Section 269, as amended by subclause 73(1), provides that where a trustee of a trust distributes property of the trust to one or more persons, the distribution of the property is deemed to be a supply of it by the trust for consideration equal to the amount determined for income tax purposes to be the proceeds of disposition. The section is further amended to specify where the deemed supply is considered to be made in order to ensure that, in the case of a taxable supply, if the place at which the property is delivered or made available to the persons is in a non-participating province, tax at the 7-per-cent GST rate applies and if the property is delivered or made available in a participating province, tax at the 15-per-cent HST rate applies.

This amendment comes into force on April 1, 1997.

Clause 233

Partnerships

ETA
272.1(2)

Subsection 272.1(2), as enacted by subclause 76(1), provides, among other things, that where property or a service is acquired or imported by a member of a partnership for consumption, use or supply in the course of activities of the partnership but not on the account of the partnership, the partnership is deemed not to have acquired or imported the property or service except as otherwise provided in subsection 175(1) relating to reimbursements. Paragraph 272.1(2)(*a*) is amended to also deal with the case where property acquired or imported by a partner otherwise than on the account of the partnership is brought into a participating province, since this is another occurrence that may result in tax becoming payable in respect of the property (i.e., the provincial component of the HST). The amended paragraph similarly deems the partnership not to have been the person that brought the property into the province in this case.

This amendment comes into force April 1, 1997.

Clause 234

Joint Venture Election

ETA
273(1) and (1.1)

Section 273 provides for an operator of a qualifying joint venture to jointly elect with a co-venturer to account for tax in respect of all supplies, acquisitions and importations made by the operator on behalf of the co-venturer under the agreement for the venture. This is achieved by deeming the operator to be making the supplies, acquisitions or importations. Paragraph 273(1)(*a*) and subsection 273(1.1) are amended to also refer to the bringing of property into a participating province on behalf of the co-venturer since that is an occurrence that could result in the provincial component of the HST becoming payable under new Division IV.1.

This amendment is effective April 1, 1997.

Clause 235

Temporary Regulations

ETA
277.1

New section 277.1 provides that the Governor in Council may make certain regulations relating to the HST within two years of its implementation on April 1, 1997 which would have effect only until May 1, 2000. Specifically, the new provision provides that, during this period of transition to the HST, regulations may be made for the purpose of facilitating the administration and enforcement of the harmonized tax or the transition to it by

- adapting or modifying the provisions of Part IX of the *Excise Tax Act* or existing regulations under that Part to the HST,
- defining words or expressions in their application to the HST,
- providing that a particular provision does not apply to the HST, or
- prescribing, determining or regulating anything that is, according to Part IX, to be prescribed, determined or regulated for the purposes only of the HST or for the purposes of Part IX other than the HST.

The transition from the dual operation of the GST and provincial retail sales tax systems in the participating provinces to the single harmonized tax system may uncover technical issues that could not have been identified until after registrants had begun to put the harmonized tax into operation. In order to effectively address these situations, the regulations made under the authority of this section for the above purposes may be made effective on a day prior to their promulgation. However, every regulation made under this authority (other than one which prescribes, determines or regulates something that Part IX requires to be prescribed, determined or regulated) will cease to have effect on May 1, 2000. Generally, the provision will have been incorporated into the Act or related legislation.

Clause 236

Penalty and Interest

ETA
280

Subclause 236(1)

Penalty and Interest on Net Tax of Selected Listed Financial Institutions

ETA
280(1.1)

Section 280 imposes penalty and interest where a person has failed to pay or remit tax or instalments on account of tax. New subsection 280(1.1) parallels existing subsection 280(2), which imposes penalty and interest on overdue or deficient instalments.

Under new subsection 280(1.1), a selected listed financial institution (as defined in new subsection 225.2(1)) that fails to pay an amount of interim net tax within the time specified in new subsection 228(2.1) is required to pay a penalty of 6 per cent per year and interest at the prescribed rate on the amount in default. The penalty and interest are computed from the time that amount of interim net tax was required to be paid until the earlier of the day the amount, penalty and interest is paid and the day the financial institution is required to file the final return for that reporting period.

This amendment is effective on April 1, 1997.

Subclause 236(2)

Unpaid Penalty and Interest

ETA
280(4.01)

Where a selected listed financial institution (as defined in new subsection 252.2(1)) is required to pay penalty or interest under subsection 280(1.1) on an interim net tax payment for a reporting period and the penalty or interest is not paid before the due date of the financial institution's final return for the period, new subsection 280(4.01) deems the penalty or interest to be an amount of net tax not remitted. As a consequence, penalty and interest continue to compound on the unpaid penalty or interest until it is paid. This provision parallels existing subsection 280(4).

This amendment is effective on April 1, 1997.

Clause 237

Disclosure of Personal Information

ETA
295(5)(*d*)(ii)

Section 295 sets out the restricted purposes for which a government official may provide confidential information obtained through the administration of Part IX of the *Excise Tax Act* to other specified persons. Existing paragraph 295(5)(*d*) provides that such information may be provided to another official solely for the purposes of the initial implementation of a fiscal policy or for the purposes of the administration or enforcement of specified Acts of Parliament. The provision is amended to add to that list of specified Acts, an Act of Parliament that provides that displays or indications of the price or consideration for property or services include tax imposed under the *Excise Tax Act* (i.e., federal legislation relating to tax-inclusive pricing).

Similarly, the existing paragraph permits an official to provide confidential information to another official, including a provincial official, solely for the purposes of the administration or enforcement of certain laws of the province, namely those that provide for the imposition of a tax or duty. The amendment adds to that list of provincial laws a law that relates to tax-inclusive pricing or that provides for reimbursements of amounts paid or payable on account of tax under the *Excise Tax Act* (such as the provincial component of the HST in respect of printed books supplied in the participating provinces).

These amendments come into force on Royal Assent.

Clause 238

Assessments

ETA
296

Subclause 238(1)

ETA
296(1)(*b*)

Existing paragraph 296(1)(*b*) provides the Minister of National Revenue with the authority to assess any tax payable by a person under Division II or IV of Part IX of the *Excise Tax Act*. This paragraph is amended to extend the Minister's authority to assess any tax payable under new Division IV.1, which generally requires a person to self-assess and remit tax on tangible personal property brought into a participating province from a non-participating province or on intangible personal property or a service acquired in a non-participating province for consumption, use or supply primarily in participating provinces.

Subclause 238(2)

ETA
296(1)(*d*)

Currently, paragraph 296(1)(*d*) provides the Minister of National Revenue with the authority to assess any amount payable by a person under section 230.1, which requires a person to repay to the Receiver General an overpayment of a net tax refund or interest thereon received by the person.

This paragraph is amended to provide the Minister with the authority to assess any amount payable by a person under paragraph 228(2.1)(*b*) or (2.3)(*d*) as well. These latter paragraphs require a person who is a selected listed financial institution (as defined by new subsection 225.2(1)) to pay to the Receiver General an amount that is a positive amount of interim net tax or an amount claimed as an interim net tax refund in excess of the amount payable to the person.

These amendments are effective on April 1, 1997.

Clause 239

Period for Assessment

ETA
298

Subclause 239(1)

ETA
298(1)(*a*.1)

Subsection 298(1) sets limitation periods with respect to assessments under section 296 for net tax or certain other amounts payable under various provisions of Part IX of the Act. New paragraph 228(2.1)(*b*) requires a selected listed financial institution (as defined by new subsection 225.2(1)) to pay to the Receiver General an amount that is a positive amount of interim net tax for a particular reporting period on or before the due date for the interim return for that period.

Similarly, paragraph 228(2.3)(*d*) requires a selected listed financial institution to pay an amount claimed as an interim net tax refund for a particular reporting period in excess of the amount payable to the person for that reporting period, on or before the due date for the final return for that reporting period.

Under new paragraph 298(1)(*a*.1), an assessment may not be made more than four years after the day the amount referred to in paragraph 228(2.1)(*b*) or paragraph 228(2.3)(*d*), as the case may be, is required to be paid.

Subclause 239(2)

ETA
298(1)(*d*.1)

New paragraph 298(1)(*d*.1) provides the limitation period in respect of assessments of tax payable by a person under new Division IV.1, which generally requires a person to self-assess and remit tax on tangible personal property brought into a participating province from a non-participating province or on intangible personal property or a service acquired in a non-participating province for consumption, use or supply primarily in participating provinces. Where the tax was required to be reported in a return, the assessment may not be made more than four years after the day on which the person was required to file the return or the day on which the return was filed, whichever is later. If there is no requirement to report the tax in a return (e.g., tax on specified motor vehicles), an assessment may not be made more than four years after the day on or before which the person is required to pay the tax to the Receiver General.

These amendments are effective April 1, 1997.

Clause 239.1

Liability of Directors

ETA
323(1)

Where a corporation fails to remit an amount of net tax as required under subsection 228(2), existing subsection 323(1) provides that the directors of the corporation are jointly and severally liable, together with the corporation, to pay the net tax and any interest or penalties relating to that net tax. Subsection 323(1) is amended to extend this joint and several liability provision to directors of a selected listed financial institution (as defined by new subsection 225.2(1)) that is a corporation where the financial institution fails to remit an amount of net tax for a reporting period on or before the due date for its final return for the period as required under new subsection 228(2.3).

This amendment is effective on April 1, 1997.

Clause 240

Goods Returned After 1990

ETA
337(9)

This subsection sets out rules that apply where goods sold prior to January 1, 1991 are returned by the customer after that date for a refund or credit for all or part of the purchase price. In most cases, the federal sales tax applicable prior to 1991 would have been paid on the goods. Therefore, in the absence of any relieving provisions, the goods would be subject to a degree of double taxation when resold by the supplier after 1990 and subject to GST at that time.

Subsection 337(9) is no longer necessary as it is unlikely that any such further price adjustments will arise. Moreover, price adjustments relating to the application of provincial taxes in the participating provinces prior to April 1, 1997, and the application of the provincial component of the HST as of April 1, 1997, will be addressed in the appropriate provincial sales tax legislation and new

Division X of Part IX of the *Excise Tax Act*. The subsection is therefore repealed.

The amendment comes into force on April 1, 1997.

Clause 241

Division X

Transitional Provisions for Participating Provinces

This Division is divided into four Subdivisions. Subdivision a contains definitions of terms used in this Division. The application rules for the HST are set out in Subdivision b. Subdivision c contains a series of rules to determine the HST status of transactions straddling the start-up of the HST. Special cases are dealt with in Subdivision d.

Subdivision a, Section 348 Interpretation

The transitional provisions in Division X have been designed to minimize the number of amendments that would be required in future as additional provinces become participating provinces under the HST. Accordingly, terms such as "announcement date", are defined and used throughout the Division as opposed to referring to specific dates in the provisions.

Section 348 contains the following definitions of words and expressions that apply throughout new Division X.

"Announcement date" for a participating province means October 23, 1996 in the case of Nova Scotia, New Brunswick and Newfoundland. This is the date of release of the technical paper relating to the HST jointly issued by the governments of Canada, Nova Scotia, New Brunswick and Newfoundland and Labrador.

"Implementation date" for a participating province means April 1, 1997 in the case of Nova Scotia, New Brunswick and Newfoundland. This is the day on which the current retail sales taxes in those provinces are replaced by the HST.

"Specified pre-implementation date" for a participating province means February 1, 1997 in the case of Nova Scotia, New Brunswick and Newfoundland. This is the date from which prepayments for property or services to be delivered or performed after March 1997 may become subject to the HST, subject to the transitional rules set out in Division X. These payments are deemed to have become due on April 1, 1997. Therefore, the supplier, if a registrant, would be required to collect the HST in respect of those payments where applicable.

Subdivision b, Section 349 Application

The application rules for the HST are contained in new section 349.

Subsection 349(1) Real Property

Subject to the transitional provisions in Subdivision c, the HST applies to sales of real property in a participating province where the ownership and possession of the property is transferred to the recipient of the supply on or after April 1, 1997. HST applies to supplies of real property in a participating province by way of lease, licence or similar arrangement where all or part of the consideration for the supply becomes due or is paid without having become due on or after April 1, 1997. In addition, the HST applies to supplies of real property in a participating province by way of lease, licence or similar arrangement where the consideration for the supply is deemed to have become due or deemed to have been paid on or after April 1, 1997 and is not deemed to have become due or to have been paid before April 1, 1997. HST is not payable on any part of the consideration that becomes due or is been paid before April 1997 unless otherwise provided under the transitional provisions contained in Subdivision c.

Subsection 349(2) Personal Property and Services

Subject to the transitional provisions in Subdivision c, the provisions of Part IX relating to the HST apply to supplies of personal property or services made in a participating province, or made in a non-participating province, for consumption, use or supply in a participating province where all of the consideration for the supply becomes due or is paid without having become due or is deemed to have become due or to have been paid on or after April 1, 1997.

Subject to the transitional provisions in Subdivision c, the HST provisions also apply to supplies of personal property or services made in a participating province, or made in a non-participating province for consumption, use or supply in the participating provinces, where part of the consideration becomes due or is paid or is deemed to have become due or to have been paid on or after April 1, 1997. HST is not payable on any part of the consideration that is paid or becomes due before April 1997 unless otherwise provided under the transitional provisions contained in Subdivision c.

Subsection 349(3) Imported Goods

Subject to the transitional provisions in Subdivision c, the HST provisions apply to goods, mobile homes not affixed to land and floating homes imported by a person on or after April 1, 1997 and to such goods imported by a person before April 1997 that are accounted for under the *Customs Act* on or after April 1, 1997.

Subsection 349(4) Tangible Personal Property Brought Into a Participating Province

Subject to the transitional provisions in Subdivision c, the HST provisions apply to tangible personal property, mobile homes not affixed to land and floating homes brought into a participating province on or after April 1997 by a carrier and to such property brought into a participating province before April 1, 1997 where the property is delivered in the participating province to a consignee on or after April 1, 1997.

Subdivision c, Sections 350 to 361 Transition

Subdivision c contains rules to determine the HST status of transactions straddling the start-up of the HST.

Section 350 Real Property

Tax under Part IX on a sale of real property generally becomes payable on the day on which either possession or ownership of the property is transferred to the purchaser, whichever is earlier. Section 350 provides that the provincial component of the HST is not payable in the case of real property sold in a participating province to a person where ownership or possession of the property is transferred to the person before April 1, 1997.

Subsection 351(1) Single Unit Residential Complex

This subsection provides that the provincial component of the HST is not payable in respect of the purchase of a single unit residential complex in a participating province made under a written agreement entered into on or before the announcement date for the participating province, in this case October 23, 1996.

Builders of a grandfathered single unit residential complex will not be entitled to claim input tax credits for the provincial component of any HST on property and services acquired, imported or brought into a participating province in order to complete the complex.

Subsection 351(2) Resupply of a Single Unit Residential Complex

Subsection 351(2) provides that where an individual (considered to be a "builder" under paragraph (*d*) of the definition of "builder" in subsection 123(1)) purchases a grandfathered single unit residential complex prior to it being occupied as a place of residence, the provincial component of the HST is not payable on any subsequent supply of the complex by that individual or any successor in title unless that subsequent supply is a taxable supply by way of lease, licence or similar arrangement or that builder or successor has used the complex as capital property, has substantially renovated the complex or has subsequently sold and reacquired the complex.

In the case where the provincial component of the HST is not payable, the builder and successor will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired to complete the complex.

Subsection 351(3) Residential Condominium Unit

This subsection provides that the provincial component of the HST is not payable in respect of the purchase of a residential condominium unit in a participating province made under a written agreement entered into on or before October 23, 1996.

Builders of a grandfathered unit will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province in order to complete the unit.

Subsection 351(4) Resupply of a Residential Condominium Unit

Subsection 351(4) provides that where a person (considered to be a "builder" under paragraph (*d*) of the definition of "builder" in subsection 123(1)) purchases a grandfathered residential condominium unit prior to it being occupied as a place of residence, the provincial component of the HST is not payable in respect of any subsequent supply of the unit by that builder or any successor in title unless that builder or successor has used the unit as capital property, has substantially renovated the unit, has subsequently sold and reacquired the unit or is making a taxable supply by way of lease, licence or similar arrangement of the unit.

In the case where no provincial component of the HST is payable, the builder and successor will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province in order to complete the unit.

Subsection 351(5) Condominium Complex

This subsection provides that the provincial component of the HST is not payable in respect of the purchase of a condominium complex in a participating province made under a written agreement entered into on or before October 23, 1996. In addition, no provincial component of the HST is payable in respect of the purchase of any residential condominium unit located in the grandfathered condominium complex.

Builders of a grandfathered condominium complex will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province in order to complete the complex.

Subsection 351(6) Resupply of Condominium Complex

Subsection 351(6) provides that where a person (considered to be a "builder" under paragraph (*d*) of the definition of "builder" in subsection 123(1)) purchases a grandfathered condominium complex prior to it being occupied as a place of residence, no provincial component of the HST is payable in respect of any subsequent supply by that builder or any successor in title unless that builder or successor has used the complex as capital property, has substantially renovated the complex, has subsequently sold and reacquired the complex or is making a taxable supply by way of lease, licence or similar arrangement of the complex. Similarly, no provincial component of the HST is payable in respect of any residential condominium unit located in the condominium complex unless the builder or successor has used the unit as capital property, has subsequently sold and reacquired the unit or is making a taxable supply by way of lease, licence or similar arrangement of the unit.

In the case where no provincial component of the HST is payable, the builder and or successor will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired imported or brought into a participating province to complete the complex or unit.

Subsection 351(7) Limited Partnership

This subsection provides for special rules in respect of the sale of interests in a limited partnership under a fixed-price offering memorandum issued on or before October 23, 1996, where the partnership is formed for the purpose of constructing and renting residential condominium units.

A typical example of this situation is where investors become limited partners for the purpose of developing and owning, through their partnership interest, a residential condominium rental complex. The limited partnership would enter into a number of fixed-price agreements including an agreement for the purchase of land and a separate agreement for the construction of the condominium. In this situation, where the interest in the limited partnership is sold under a fixed-price offering memorandum issued on or before October 23, 1996 and possession of a condominium unit is given to a person under a lease, licence or similar arrangement after March 1997, the limited partnership, which is regarded as the builder of the complex, will not be subject to the self-supply rules under subsection 191(1).

The limited partnership will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province in order to complete the complex. The provincial component of the HST is not payable by the limited partnership under the agreement for the construction of the condominium and the supplier of the construction service will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province for consumption or use in making the supply of construction services.

Subsection 351(8) Progress Payments

Where an individual has entered into an agreement in writing on or before October 23, 1996 for the construction or substantial renovation of a single unit residential complex, residential condominium unit or a multiple unit residential complex that does not contain more than two residential units (i.e., a duplex) in a participating province and the unit or complex is to be used as the primary place of residence of the individual, a person related to the individual or the former spouse of the individual, no provincial component of the HST is payable on the progress payments.

The supplier of the construction service will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province for consumption or use in making the supply of construction services.

Sections 352 to 361 Property and Services

These sections set out rules relating to transactions that straddle the start-up of the HST for supplies of real property not covered under the preceding sections (e.g., leases), tangible personal property and services.

Subsection 352(1) Personal Property Before Implementation

Subsection 352(1) provides that the provincial component of the HST does not apply to sales of tangible personal property made in a participating province under an agreement in writing entered into on or before October 23, 1996 where the property is delivered or ownership is transferred to the purchaser before April 1, 1997, regardless of when the consideration is paid or becomes due.

Subsection 352(2) Imported Taxable Supply Before Implementation

Subsection 352(2) provides that the provincial component of the HST does not apply to an imported taxable supply (within the meaning of section 217) of tangible personal property under an agreement in writing entered into on or before October 23, 1996 made to a person resident in a participating province or to a registrant to whom physical possession of the property is transferred in a participating province, where physical possession of the property is transferred to the person before April 1, 1997, regardless of when the consideration for the supply is paid or becomes due.

Subsection 352(3) No Written Agreement

Where there is no agreement in writing entered into on or before October 23, 1996, subsection 352(3) provides that the provincial component of the HST does not apply to a supply of tangible personal property made in a participating province if the property is delivered or ownership is transferred to the purchaser before April 1, 1997 to the extent that the consideration for the supply becomes due or is paid before August 1, 1997.

Subsection 352(4) Imported Taxable Supply

Where there is no agreement in writing entered into on or before October 23, 1996, subsection 352(4) provides that the provincial component of the HST does not apply to an imported taxable supply (within the meaning of section 217) of tangible personal property made to a person resident in a participating province or to a registrant to whom physical possession of the property is transferred in a participating province, if physical possession of the property is delivered to the person before April 1, 1997, to the extent that the consideration for the supply becomes due or is paid before August 1, 1997.

Subsection 352(5) Continuous Supplies

Subsection 352(5) addresses the situation where property or services are supplied on a continuous basis by means of a wire, pipeline or other conduit. This would include supplies of natural gas, electricity and telephone services.

This subsection provides a general prorating rule for continuous supplies of property or services made in a participating province and straddling the HST start-up date where the consideration for the supply becomes due or is paid before August 1, 1997. The provincial component of the HST will not apply to property or services to the extent they are delivered or rendered before April 1, 1997.

Section 353 contains rules where payment for a continuous supply is being made under a budget arrangement.

Subsection 352(6) Continuous Supplies

This subsection provides that where the consideration for a continuous supply made in a participating province is neither paid nor becomes due until after July 1997, the provincial component of the HST is payable in respect of that consideration regardless of when the property or service is delivered, performed or made available.

Subsection 352(7) Subscriptions

Subsection 352(7) provides that the provincial component of the HST does not apply to payments for newspaper, magazine or other periodical subscriptions that are made in a participating province before April 1, 1997. Payments made or becoming due on or after April 1, 1997 and before August 1997 are subject to the HST to the extent that they are for publications delivered on or after April 1, 1997. Payments becoming due after July 1997 will be subject to the HST regardless of when delivery of the publications occurs.

Subsection 352(8) Prepayments

Subsection 352(8) deals with the situation where consideration becomes due, or is paid without having become due, on or after the specified pre-implementation date for a participating province (in this case February 1, 1997) and before the implementation date (i.e., April 1, 1997) for tangible personal property that is supplied in a participating province and that is not delivered and title to which does not pass to the purchaser before April 1, 1997. In these circumstances, the consideration is deemed to have become due on April 1, 1997 and not to have been paid before that day. As a result, the provincial component of the HST is payable on that consideration.

Subsection 352(8) also deals with the situation where consideration becomes due, or is paid without having become due, on or after February 1, 1997 and before April 1, 1997 for an imported taxable supply (within the meaning of section 217) of tangible personal property that is not delivered and title to which does not pass to the purchaser before April 1, 1997. In these circumstances the consideration is deemed to have become due on April 1, 1997 and not to have been paid before that day.

This subsection does not apply to subscriptions referred to in subsection 352(7).

Subsection 352(9) Self-assessment on Business Purchases of Tangible Personal Property

Subsection 352(9) provides for the self-assessment of tax on purchases of tangible personal property made in a participating province by a registrant to a recipient who is not a consumer, and on imported taxable supplies (within the meaning of section 217), where consideration for the supply becomes due or is paid after October 23, 1996 and before February 1, 1997 and the property is not delivered and title to it does not pass to the recipient before April 1, 1997.

Self-assessment is required where the property is not acquired by the recipient for consumption, use or supply exclusively in commercial activities of the recipient. Self-assessment is also required where the property is acquired by the recipient for consumption, use or supply exclusively in commercial activities but the recipient is a selected listed financial institution (as newly defined in subsection 123(1)) or a registrant whose net tax is determined under section 225.1 (added by subclause 45(1)) or Part IV or V of the *Streamlined Accounting (GST) Regulations*.

Paragraph 352(9)(*d*) requires that the recipient report the tax in the recipient's return for the reporting period of the recipient that includes April 1, 1997, provided that return is due before August 1, 1997. The recipient is required to remit the tax on or before the day the return is due. Where paragraph (*d*) does not apply, the recipient is required to file with the Minister of National Revenue (in the prescribed manner) before August 1, 1997 a return and pay the tax to the Receiver General.

This subsection is subject to the rules for continuous supplies, as set out in subsection 352(5), and for subscriptions, as set out in subsection 352(7).

Subsection 352(10) Self-assessment on Business Purchases of Services

Section 352(10) provides for the self-assessment of tax on services supplied in a participating province by a registrant to a person who is not a consumer, where consideration becomes due or is paid without having become due after October 23, 1996 and before February 1, 1997 and such prepayment is attributable to services performed after March 1997. This subsection also requires self-assessment in similar circumstances where the supply of services is made outside the participating provinces to a person who is resident in a participating province.

Self-assessment is required where the property is not acquired for consumption, use or supply exclusively in commercial activities of the person. Self-assessment is also required where the property is acquired for consumption, use or supply exclusively in commercial activities of the person if the person is a selected listed financial institution (as newly defined in subsection 123(1)) or a registrant whose net tax is determined under section 225.1 (added by subclause 45(1)) or Part IV or V of the *Streamlined Accounting (GST) Regulations*.

Paragraph 352(10)(*d*) requires that the person report the tax in the person's return for the reporting period of the person that includes

April 1, 1997, provided that return is due before August 1, 1997. The person must pay the tax to the Receiver General on or before the day the return is due. Where paragraph (*d*) does not apply, the person is required to file with the Minister of National Revenue (in prescribed manner) before August 1, 1997 a return and pay the tax to the Receiver General.

Notwithstanding this subsection, the subsections dealing with continuous supplies (subsection 352(5)), services substantially performed before April 1997 (subsection 356(1)), passenger transportation (subsection 358(1)) and freight transportation (subsection 359(1)) provide that the provincial component of the HST is not payable on certain supplies of services commencing before April 1997.

Subsection 352(11) Goods Returned after Implementation

Situations will arise where price adjustments are made following the start-up of the HST in respect of supplies made prior to start-up. Examples include deferred quantity discounts, adjustments for goods less than quality or quantity ordered, and exchanges for defective goods. For the most part, these adjustments will have no implications for the provincial component of the HST. Goods returned in straight exchange for other replacement goods will not have consequences for the provincial component of the HST as long as the transaction does not involve the issuance of a credit note or a refund to the customer.

This subsection sets out rules that apply where a good sold in a participating province prior to April 1, 1997 is returned by the customer after March 1997 and before August 1997 and is exchanged for other property supplied to the person in the participating province. If the consideration for the other property exceeds that for the exchanged property, the provincial component of the HST applies only on the excess amount and if the consideration for the supply of the other property is equal to or less than the consideration for the returned property, no provincial component of the HST is payable.

Subsection 352(12) Supply Completed

Generally, any consideration for a taxable supply of property or service made in a participating province that has not become due or been paid before August 1997 will be subject to the provincial component of the HST, regardless of when the property is delivered or the service is performed. Section 168 provides rules to determine at which time tax becomes payable. One of those rules provides that tax is payable no later than the end of the month following the month in which the supply is completed. Subsection 352(12) treats the month of completion as being August 1997 where the actual month of completion is prior to April 1997 to ensure that where a pre-implementation date sale becomes taxable by virtue of the consideration not being paid or becoming due until after July 1997, the provincial component of the HST on the consideration is payable no later than September 30, 1997.

Subsection 352(13) Application

This subsection provides that the rules in section 352 with respect to supplies in a participating province that straddle the start-up date of the HST do not apply to supplies made under a budget arrangement. Rules for these arrangements are set out in section 353.

Section 353 Budget Arrangements

This section provides for a year-end reconciliation for budget plans so that the provincial component of the HST, in effect, applies only to goods delivered or services performed after March 1997.

Subsection 353(1) Budget Arrangements

This subsection requires the supplier of property or services provided in a participating province during any period beginning before April 1997 and ending after that month, and paid for under a budget arrangement providing for a reconciliation of the payments at or after the end of the period but before April 1998, to calculate an amount determined by the formula set out in this subsection. The amount represents the difference between the tax calculated at the tax rate for the province (8 per cent) only in respect of the property or services that were provided after March 1997 and tax calculated at the rate of 8 per cent on the consideration that becomes due, or is paid without having become due, after March 1997 for property or services provided during the entire period covered by the arrangement.

Subsection 353(2) Collection of Tax

Where the amount determined under subsection 353(1) is a positive amount (i.e., where the recipient has not paid the full amount of the provincial component of the HST payable in respect of the property or services received after March 1997), and the supplier of the property or services is a registrant, the supplier is required to collect this amount as tax from the recipient at the time the invoice for the reconciliation is issued.

Subsection 353(3) Refund of Excess

Where the amount determined under subsection 353(1) is a negative amount (i.e., the amount of the provincial component of the HST paid by the recipient over the period exceeds the tax payable in respect of the property or services received after March 1997), and the supplier of the property or services is a registrant, the supplier is required to refund or credit the amount to the recipient and issue a credit note in accordance with section 232.

Subsection 353(4) Continuous Supply

In the case of a continuous supply of property or services made in a participating province under a budget arrangement where the time at which the property is delivered or services are provided cannot be determined for purposes of calculating the amount determined by the formula set out in subsection 353(1), the supply is to be prorated according to the number of days in the period.

Section 354 Rents and Royalties

The transitional rules governing prepaid rents, royalties and similar payments attributable to periods before and after March 1997 are set out in this section.

Subsection 354(1) Prepayment of Rents and Royalties

Subject to the special rule in subsection 354(4), the provincial component of the HST applies to any payment that is rent, royalty or a similar payment attributable to a period after March 1997 that would be subject to the provincial component of the HST if the payment became due after March 1997 but that actually becomes due, or is paid without becoming due, after January 1997 and before April 1997. The payment is considered to have become due on April 1, 1997 and not to have been paid before that day.

Subsection 354(2) Self-assessment on Business Prepayments of Rents and Royalties

This subsection parallels similar rules in subsection 352(9) and (10). The provincial component of the HST is payable in certain circumstances on lease payments to the extent the payment is made or becomes due after October 23, 1996 and before February 1, 1997 and is attributable to a period after March 1997. The tax must be self-assessed where the supply is made in a participating province to a person who is not a consumer (e.g., a person who is acquiring the property or service for use in a commercial activity or in the making of an exempt supply) or the supply is an "imported taxable supply" (within the meaning of section 217) made to a resident of a participating province or, in the case of a supply of property, made to a person who receives possession or delivery of the property in a participating province.

The rules provided in subsection 354(2) require self-assessment where the property is not acquired for consumption, use or supply exclusively in commercial activities of the person. Self-assessment is also required if the property is acquired for consumption, use or supply exclusively in commercial activities of the person and the person is a selected listed financial institution (as newly defined in subsection 123(1)) or a registrant whose net tax is determined under section 225.1 (added by subclause 45(1)) or under Part IV or V of the *Streamlined Accounting (GST) Regulations*.

Paragraph 354(2)(*d*) requires that the person report the tax in the person's return for the reporting period that includes April 1, 1997, provided that return is due before August 1, 1997. The person must pay the tax to the Receiver General on or before the due date for the return. Where paragraph (*d*) does not apply, the person is required to file with the Minister of National Revenue (in prescribed manner) before August 1, 1997 a return and pay the tax to the Receiver General.

This subsection is subject to the special rule in subsection 354(4).

Subsection 354(3) Periods Before Implementation

Where a supply of property by way of lease, licence or similar arrangement is made in a participating province, or is an imported taxable supply (within the meaning of section 217) made to a resident of a participating province or, in the case of a supply of property, made to a person who receives delivery or possession of the property in a participating province, the provincial component of the HST does not apply to any rent, royalty or similar payment attributable to a period before April 1997, provided that the payment for that period becomes due or is paid before August 1, 1997.

Subsection 354(4) Periods Including Implementation Date

The provincial component of the HST does not apply to any rent, royalty or similar payment for a supply made in a participating province or imported taxable supply made to a resident of a participating province or, in the case of a supply of property, made to a person who receives delivery or possession of the property in a participating province, where the payment is attributable to a period of one month or less that begins before April 1, 1997 and ends before April 30, 1997. For example, where a monthly lease period starts on March 15, 1997 and ends on April 14, 1997, the provincial component of the HST is not payable for the period from April 1, 1997 to April 14, 1997.

Subsection 354(5) Application

The rules governing rent, royalty and similar payments do not apply to payments associated with the use of intangible personal property where the amount of the payment does not vary with the amount of, or profit from, the use of the property or the production from the property. An example is a lump-sum payment made before April 1997 to an author for all rights associated with a book written by the author. In this case, the provincial component of the HST is not payable.

Section 355 Adjustments

Subsections 352(9), 352(10) and 354(2) require persons other than consumers, in certain circumstances, to self-assess and pay tax on property transferred, or services rendered, after March 1997, but where payments were made or became due after October 23, 1996 and before February 1, 1997. Section 355 allows the person to claim a refund under section 261 of the provincial component of the HST where the amount of tax changes, such as where the consideration for the supply is altered. However, this rule does not apply where the adjustment is an early payment discount referred to in section 161.

Section 356 Services

This section provides the transitional rules for services (other than transportation services) that are partially or fully performed before April 1, 1997 as well as for prepaid services that are performed after March 1997.

Subsection 356(1) Services Substantially All Performed Before Implementation

A supply of a service (other than a transportation service) made in a participating province or outside the participating provinces to a resident of a participating province that is all or substantially all performed before April 1997 is not subject to the provincial component of the HST provided that the consideration for the supply becomes due or is paid before August 1, 1997.

There is a special rule for lifetime memberships provided in subsection 356(6).

Subsection 356(2) Services Partly Performed Before Implementation

Consideration for a supply of a service (other than a transportation service) made in a participating province, or outside the participating provinces to a resident of a participating province, that is partly (but not all or substantially all) performed before April 1, 1997 and partly performed after March 1997 is not subject to the provincial component of the HST to the extent that the consideration relates to any part of the service that was performed before April 1997, provided that the consideration becomes due or is paid before August 1, 1997.

There is a special rule for lifetime memberships provided in subsection 356(6).

Subsection 356(3) Prepayments for Services

Subject to the rules for progress payments and for continuous supplies, the provincial component of the HST applies to any consideration for a supply of a service (other then a transportation service) to the extent that the consideration relates to that part of the service that is not performed before April 1997 where the supply of the service is made in a participating province or outside the participating provinces to a person who is resident in a participating province and the consideration becomes due or is paid on or after February 1, 1997 and before April 1, 1997. This consideration is treated as having become due on April 1, 1997 and as not having been paid before that day. Therefore, tax in respect of that consideration becomes payable on April 1, 1997.

There is a special rule for lifetime memberships provided in subsection 356(6).

Subsection 356(4) Memberships and Admissions

Subsection 356(4) treats a supply of a membership in a club, an organization or an association (but not the supply of a right to acquire such a membership) and a supply of an admission to a place of amusement, a seminar, an activity or an event as a supply of a service for the purposes of the transitional provisions. An initiation fee for the right to acquire a membership is treated as a supply of intangible property and, therefore, the provincial component of the HST does not apply to such fees paid before April 1997.

Subsection 356(5) Grandfathered Admissions

Where a supply of an admission to a dinner, ball, concert, show or like event in a participating province is made on or before October 23, 1996, the provincial component of the HST does not apply to any supply of an admission to that event. Suppliers of the admission will not be entitled to claim input tax credits for the provincial component of the HST on any property or services acquired, imported or brought into a participating province for consumption, use or supply in making supplies of admissions to the event or holding that event.

Subsection 356(6) Lifetime Memberships

This subsection provides a special rule for the supply of a membership for the lifetime of an individual where payment for the membership is made after October 23, 1997 and before April 1, 1997 and the payment would have been subject to the provincial component of the HST (either under subsection 165(2) or on a self-assessment basis) if it were made after March 1997. Where the total of such payments made before April 1997 exceed 25 per cent of the total consideration for the supply, the excess will be subject to the provincial component of the HST.

Subsection 356(7) Combined Supply

This subsection provides that where any combination of service, personal property or real property is supplied, the consideration for each item is not identified separately and one of the items supplied is property that is not subject to the provincial component of the HST as a result of the rules provided in this Division, the transfer of the property will not determine the timing of any liability for the provincial component of the HST on the remaining items.

Subsection 356(8) Application

This subsection provides that the transitional rules for services set out in section 356 do not apply to services paid for under budget arrangement plans as provided for in section 353.

Section 357 Legal Services and Services of Trustees, Receivers and Liquidators

This section extends transitional relief to certain classes of services where the supplier is prevented from issuing an invoice before August 1997 for services performed before April 1997.

Subsection 357(1) Legal Services Performed Before Implementation

This subsection provides that the provincial component of the HST is not payable in respect of that part of a legal service that is performed before April 1997 if, under the terms of the agreement for the supply, the consideration for the supply was not to be invoiced until allowed, directed or ordered by a court or until the services were completed or terminated.

Subsection 357(2) Trustees, Receivers, Liquidators etc.

This subsection provides that the provincial component of the HST is not payable in respect of that part of a service of a personal representative in respect of an administration of an estate that is performed before April 1997 if the account for the service is not to be rendered until approved by all beneficiaries of the estate or in accordance with the terms of the trust. Relief is also provided where the consideration for the service is not to become due until allowed, directed or ordered by a court.

This subsection also provides that the provincial component of the HST is not payable in respect of that part of a service of a trustee that is performed before April 1997 if the account for the trustee's services is not to be rendered until a date determined under the terms of the trust or written agreement for the supply of the trustee's services. Relief is also provided where the consideration for the service is not to become due until allowed, directed or ordered by a court.

Finally, this subsection provides that the provincial component of the HST is not payable in respect of that part of a service of a receiver or liquidator that is performed before April 1997 if the consideration for the service is not to become due until allowed, directed or ordered by a court.

Subsection 357(3) Services Before Implementation

As a result of this subsection, if substantially all of a service that is supplied in a participating province and described in subsection 357(1) or (2) is performed before April 1997, all of the service will be considered to have been performed before April 1997 and therefore no provincial component of the HST will apply.

Section 358 Transportation Services

This section provides transitional rules for passenger transportation services.

Subsection 358(1) Transportation of Individuals

The provincial component of the HST does not apply to a supply of a passenger transportation service (other than a transportation pass covering a period that commences before April 1, 1997 and ends after April 30, 1997) made in a participating province where the service commences before April 1997, provided that the payment for the service becomes due or is paid before August 1, 1997. A supply of a service of transporting the individual's baggage in connection with the passenger transportation service will have the same treatment as the passenger transportation service.

Subsection 358(2) Transportation of Individuals

Subsection 358(2) deals with a passenger transportation service (other than a supply of a transportation pass covering a period that commences before April 1, 1997 and ends after April 30, 1997) made in a participating province and for which consideration becomes due or is paid without having become due on or after February 1, 1997 and before April 1, 1997 for services not performed before April 1, 1997. The consideration is deemed to have become due on April 1, 1997 and not to have been paid before that day. As a result, the provincial component of the HST is payable on that amount.

Subsection 358(3) Transportation Pass

The provincial component of the HST does not apply to a transportation pass supplied in a participating province to an individual for transportation services provided over a period that begins before April 1, 1997 and ends before May 1, 1997.

Subsection 358(4) Transportation Pass

Where the transportation pass supplied in a participating province to an individual for transportation services covers a period that begins before April 1, 1997 and ends after April 30, 1997, the provincial component of the HST applies on a prorated amount of consideration. The total consideration is prorated for the number of days in the period that are after March 1997.

Section 359 Freight Transportation Services

This section provides transitional rules for freight transportation services.

Subsection 359(1) Freight Transportation Services

Under this provision, any consideration for a continuous freight transportation service supplied in a participating province and commencing before April 1, 1997 is not subject to the provincial component of the HST, provided that the consideration becomes due or is paid before August 1, 1997.

Subsection 359(2) Freight Transportation Services After Implementation

Any consideration for a freight transportation service supplied in a participating province and performed entirely after March 1997 is subject to the provincial component of the HST where the consideration becomes due or is paid without having become due on or after February 1, 1997 and before April 1, 1997. The consideration is deemed to have become due on April 1, 1997 and not to have been paid before that day. As a result, the provincial component of the HST is payable on that amount.

Subsection 359(3) Interpretation

This subsection provides that the terms "continuous freight movement", "freight transportation service" and "shipper" have the meanings assigned by Part VII of Schedule VI.

Section 360 Funeral Services

This section sets out the rules governing prepaid funeral services.

Subsection 360(1) Definition of "Funeral Services"

Subsection 360(1) defines "funeral services" to include the provision of any property (including a burial plot, coffin or headstone) relating to the funeral, burial or cremation of an individual provided under a funeral service arrangement.

Subsection 360(2) Funeral Arrangements

The provincial component of the HST does not apply to prepaid funeral services where the arrangement for the funeral services is entered into in writing before April 1, 1997 and the funds under the arrangement are held by a trustee who is responsible for acquiring the funeral service, provided that, at the time the arrangement was entered into, it was reasonable to expect that all or part of the funds for the funeral service would be paid to the trustee before the services were rendered.

Subsection 360(3) Funeral Arrangements

The provincial component of the HST does not apply to prepaid funeral services supplied in a participating province where a written contract for the services was entered into before April 1, 1997. The consideration for the funeral services does not necessarily have to be paid in full as long as, at the time the arrangement was entered into, it was reasonable to expect that all or a part of the funds for the funeral service would be paid before the services were rendered.

Section 361 Products held by Independent Sales Contractor

Direct sellers distribute their products to final purchasers through independent sales contractors rather than through retail establishments. The alternate collection method under sections 178.3 and 178.4 provides direct sellers (or alternatively their distributors) with the option of ignoring, for sales tax purposes, sales to independent sales contractors of exclusive products of the direct seller and, instead, calculating their net tax liability as if the sales had been made directly to final purchasers for the suggested retail price of the products. Products held at the beginning of April 1, 1997 for sale in a participating province would not have borne the provincial component of the HST. Section 361 provides a mechanism to apply that tax to such exclusive products.

Subsection 361(1) Products from a Direct Seller

Where the Minister of National Revenue has approved the use of the alternate collection mechanism for direct sellers under section 178.3, the direct seller is responsible for accounting for tax on exclusive products of the direct seller sold to final purchasers, based on the suggested retail selling price of the products. If such a product has been sold by the direct seller to an independent sales contractor and is held at the beginning of April 1, 1997 by the independent sales contractor, the provincial component of the HST would not, but for section 361, apply. Under subsection 361(1), the direct seller is deemed, for the purpose of applying the provincial component of the HST, to have made, on April 1, 1997, and the independent sales contractor is deemed to have received on that day, a supply by way of sale of the exclusive products that are held for sale in a participating province at the beginning of that day by the independent sales contractor. The effect of this provision is that the direct seller will be responsible for remitting the provincial portion of the HST on those exclusive products.

Subsection 361(2) Products for which a Distributor Accounts for Tax

The alternate collection mechanism under section 178.4 operates in the same manner as the mechanism under section 178.3 for direct sellers except that it is the distributor of the direct seller electing jointly with the direct seller who accounts for tax on the exclusive products of the direct seller based on the suggested retail selling price of the products. The rules of subsection 361(2) parallel those for subsection 361(1) except that it is the distributor, not the direct seller, who remits the provincial component of the HST on the suggested retail price of all exclusive products that independent sales contractors hold at the beginning of April 1, 1997 for sale in a participating province.

Subsection 361(3) Definitions

This subsection provides that the terms "direct seller", "distributor", "exclusive product" and "independent sales contractor" have the meanings assigned by section 178.1.

Subdivision d, Sections 362 and 363 Special Cases

This subdivision provides for the treatment of the property and services supplied in connection with the construction of the Northumberland Strait Crossing between New Brunswick and Prince Edward Island. It also provides transitional rules for determining a registrant's instalment base.

Section 362 Northumberland Strait Crossing

This section provides for the treatment of the property and services supplied in connection with the construction of the Northumberland Strait Crossing between New Brunswick and Prince Edward Island.

Subsection 362(1) Definitions

This subsection provides that the terms "Advisory Group", "Crossing" and "Developer" have the meanings assigned by section 1 of the *Northumberland Strait Crossing Act* of New Brunswick.

Subsection 362(2) Construction of Crossing

This section provides that the provincial component of the HST is not payable in respect of property or services acquired for consumption or use exclusively in the construction of the Northumberland Strait Crossing.

Subsection 362(3) Exemption Certificates

This subsection provides that the general rule set out in subsection 362(2) does not apply to a recipient other than the Developer unless the recipient provides the supplier with a valid exemption certificate issued by the Advisory Group.

Section 363 Instalments

This section provides transitional rules for determining a registrant's instalment base.

Subsection 363(1) Instalment Base Following Implementation

Subsection 363(1) provides a transitional rule for determining the instalment base for a registrant resident in a participating province (other than a selected listed financial institution as defined in new subsection 225.2(1)) who has an annual reporting period that begins during the calendar year 1997.

The registrant's instalment base for that reporting period payable after the first fiscal quarter of the registrant beginning on or after April 1, 1997 is the lesser of the amount determined under paragraph 237(2)(*a*) (i.e., the estimate of that year's actual instalment base) and 200 per cent of the amount determined under paragraph 237(2)(*b*) (i.e., twice the amount of the registrant's preceding year's instalment base, which is somewhat less than what that base would have been if all the registrant's taxable supplies had been taxed at 15 per cent).

Subsection 363(2) Selected Listed Financial Institutions

Selected listed financial institutions (as defined in new subsection 225.2(1)) that are annual filers who determine their net tax under new section 225.2 are required by amended subsection 237(1) to pay quarterly instalments equal to the amount determined under subsection 237(2). However, new subsection 363(2) provides a transitional rule for determining the instalments for fiscal quarters that end on or after April 1, 1997 in the financial institution's transitional fiscal year that begins before April 1, 1997 and ends on or after that day. The selected listed financial institution must elect to sue one of the four methods set out in the subsection. The election must be in prescribed form but need not be filed.

Generally, the methods set out in paragraphs 363(2)(*a*) and (*b*) are based on the financial institution's total net tax for reporting periods ending in the 12-month period preceding the transitional fiscal year.

Under paragraph 363(2)(*a*), the financial institution's instalments for fiscal quarters ending after March 1997 in the transitional fiscal year are generally equal to the lesser of

- 1/4 of the financial institution's net tax for the transitional fiscal year, and
- 1/4 of the financial institution's total net tax for all reporting periods ending in the 12-month period preceding the transitional fiscal year, grossed up by 8/7ths of the lesser of the total of the financial institution's allocation percentages for the participating provinces for the taxation year in which the transitional fiscal year ends and the total of its allocation percentages for the preceding taxation year(both as determined in accordance with rules prescribed under new section 225.2)

The method in paragraph 363(2)(a) permits the financial institution to calculate its instalments on the basis of the previous year's results. However, where the financial institution anticipates a decline in net tax in the transitional fiscal year or a decline in its allocation percentages, it is permitted to base its instalment payments on an estimate of the current year's net tax or allocation percentages, as the case may require. Provided that the financial institution has not underestimated the transitional year's net tax or allocation percentages, no penalty or interest is payable under section 280.

Under paragraph 363(2)(b), the financial institution's instalments for fiscal quarters ending after March 1997 in the transitional fiscal year are generally equal to 1/4 of the financial institution's total net tax for all reporting periods ending in the 12-month period preceding the transitional fiscal year, grossed up by 8/7ths of the financial institution's allocation percentages for the taxation year preceding the taxation year in which the transitional fiscal year ends. This method permits the financial institution to calculate its instalments solely on the basis of the previous year's results.

The methods set out in paragraphs 363(2)(*c*) and (*d*) are based on the financial institution's unrecoverable GST for the transitional fiscal year or for reporting periods ending in the preceding 12-month period. The method of determining a person's unrecoverable GST is discussed in the commentary on new subsection 225.2(2) under subclause 209(1).

Under paragraph 363(2)(c), the financial institution's instalments for fiscal quarters ending after March 1997 in the transitional fiscal year are generally equal to the lesser of 1/4 of the financial institution's net tax for the transitional fiscal year and the total of

- the amount by which 1/4 of the financial institution's unrecoverable GST for the transitional fiscal year, grossed up by 8/7ths of the lesser of the total of the financial institution's allocation percentages for the taxation year in which the transitional fiscal year ends and the total of its allocation percentages for the preceding taxation year, exceeds the total of the provincial component of the HST that is paid or becomes payable by the financial institution in the fiscal quarter,

- the total of the provincial component of the HST that is collected or becomes collectible by the financial institution in the fiscal quarter, and

- 1/4 of the financial institution's total net tax for reporting periods ending in the 12-month period preceding the transitional fiscal year.

The method in paragraph 363(2)(*c*) permits the financial institution to calculate the portion of each instalment that is attributable to GST on the basis of its actual results in the previous year. The portion of an instalment that is attributable to the provincial component of the HST is generally based on the provincial component that actually was paid or became payable by the financial institution, or that was collected or became collectible by the financial institution, during the fiscal quarter to which the instalment relates. However, the portion attributable to the net tax adjustment relating to the provincial component on the financial institution's purchases must be estimated on the basis of the financial institution's unrecoverable GST for the transitional year, although the financial institution may use attribution percentages for the participating provinces based on an estimate for the transitional year or based on the actual percentages for the preceding year. Where the financial institution anticipates an overall decline in net tax in the transitional fiscal year, it is also permitted to base its instalment payments on an estimate of the transitional year's net tax. However, in any case where the financial institution underestimates its required instalments, it will be subject to penalty and interest under section 280.

The method in paragraph 363(2)(*d*) is similar to the method in paragraph 363(2)(*c*). Generally, the instalment is determined on the basis of the financial institution's results for the reporting periods ending in the 12-month period preceding the transitional year, including the portion of each instalment that is attributable to GST and the portion attributable to the net tax adjustment relating to the provincial component of the HST on the financial institution's purchases. However, the portion of an instalment that is attributable to the provincial component of the HST that actually was paid or became payable by the financial institution, or that was collected or became collectible by the financial institution, is based on the financial institution's actual payments and collections during the fiscal quarter to which the instalment relates. Accordingly, the instalments may be calculated on the basis of the financial institution's actual results. This method does not permit the financial institution to base its instalments on an estimate of its net tax for the transitional fiscal year.

New subsection 363(2) applies to reporting periods that end after March 1997.

Clause 242

Division XI – Tax-Inclusive Pricing

ETA
364 to 368

Section 364 Definitions

This section defines terms used in new Division XI.

"electronic advertisement"

The definition "electronic advertisement" is relevant to new subsection 366(2) which sets out rules relating to inter-provincial electronic advertisements. An "electronic advertisement" of a registrant includes any audible or visual communication sent or transmitted by radio or television broadcast, or through an electronic or telecommunication medium, by or on the direction of the registrant, which mentions or displays in those advertisements a price that consumers could expect to pay for the advertised property or service.

"national catalogue"

The term "national catalogue" is relevant to new subsection 366(3), which stipulates what and how information pertaining to the tax payable on advertised goods and services is to be indicated in a national catalogue. The publications to be considered "national catalogue" and therefore to which these rules apply will be prescribed by regulation.

"price information"

The definition "price information" is relevant for the purposes of new section 365. The term "price information" refers to the various forms of information by which consumers are informed of the prices they could reasonably expect to pay for a specific good or service that is displayed, described, detailed or advertised. Among the forms that such information may take are tags, price lists, oral communication, written and electronic advertisements, contracts and catalogues.

"price list"

A "price list" is one type of "price information", as defined in new section 364. "Price list" is defined in respect of property or a service as any list, menu, catalogue or any other type of document, whether written, printed or electronically produced or disseminated, that indicates the price for which the supplier of the property or service will supply the property or service to a consumer as defined in subsection 123(1).

"price tag"

The term "price tag" is used in the definition of "price information" in section 364.

A "price tag" for property refers to any tag, sticker, label, sign or other device (other than a prescribed device) that is printed or embossed on, attached to or displayed in conjunction with, or in relation to, the property. The price tag must visually indicate the price or consideration of the property for sale to a consumer as defined in subsection 123(1).

"specified supplier"

The term "specified supplier" is used in new section 365. This term refers to persons that are required, when they are registrants making "specified supplies" (also defined in section 364), of property or services to consumers, to indicate in all price information in respect of the property or services the tax-inclusive price.

The term "specified supplier" includes a supplier (other than a prescribed supplier) that is a federal government department or a board, agency, corporation or other body that is established under an Act of Parliament to perform any function or duty on behalf of the Government of Canada. This would include federal crown corporations and federal agencies.

Furthermore, it also includes a person who carries on a work, undertaking or business that is within the legislative authority of Parliament. This would include federally-regulated industries such as the airline, rail and banking industries.

"specified supply"

The term "specified supply" is used in new section 365. This term describes the supplies of property or services made by a specified supplier (also defined in section 364) in respect of which the supplier is required to indicate in all price information in respect of the property or service its tax-inclusive price.

A "specified supply" means a supply (other than a prescribed supply) that is made by a specified supplier and that is within the legislative authority of Parliament or the consideration for which is payable to a federal government department, crown corporation or other body referred to in paragraph (*b*) of the definition "specified supplier" in section 364.

"written advertisement"

The definition "written advertisement" is relevant to subsection 366(1), which relates to inter-provincial written advertisements. A "written advertisement" of a registrant includes any written or printed communication sent or distributed by or on the direction of the registrant that mentions or displays in those advertisements a price that consumers could expect to pay for the advertised property or service. However, national catalogues and written advertisements that do not include the price or consideration for any property or service to which the written advertisement relates are not included in the definition of "written advertisement".

Section 365 Price Information – Federal Works etc.

Section 365 imposes the requirement for tax-inclusive pricing on all specified suppliers that make or offer to make specified supplies of property or services to consumers. The terms "specified supplier" and "specified supply" are defined in section 364. The price information, also as defined in section 364, must indicate the consideration for the supply of the property or service and all taxes imposed under the *Excise Tax Act* on consumers in respect of the supply.

Section 366 Interprovincial Advertisements

New section 366 provides rules relating to tax-inclusive pricing with respect to interprovincial written advertisements.

Subsection 366(1) provides that every registrant (other than a prescribed registrant) who is not resident in a participating province and who advertises property or services to consumers in a written form in the province, (e.g., in magazines, on billboards, or in any other written medium that mentions or displays a price that consumers could expect to pay for the advertised property or service) must display or communicate the price of the property or service on a tax-inclusive basis or in compliance with prescribed standards.

Subsection 366(2) provides rules for tax-inclusive pricing with respect to inter-provincial electronic advertisements. Registrants (other than prescribed registrants) who are not resident in a participating province and who advertise property and services electronically in the province (e.g., by radio, television or any other telecommunications medium) and mention or display in those advertisements a price that consumers could expect to pay for the advertised property or service must display or communicate that price on a tax-inclusive basis or in compliance with prescribed standards.

Subsection 366(3) provides that national catalogues must either display prices on a tax-inclusive basis or indicate on the first page and on every second page thereafter that prices displayed in the catalogue do not include tax.

Section 367 Agents of Suppliers

Section 367 ensures that where an agent of a registrant offers to supply property or a service on behalf of the registrant, the agent is required to comply with the tax-inclusive pricing requirements.

Section 368 Offence

Subsection 368(1) indicates that every person who fails to comply with the tax-inclusive pricing requirements, as set out in Division XI, is guilty of an offence and liable on summary conviction to a fine of not less than $100 and not more than $5000 or to imprisonment for not more than 30 days or to both.

Subsection 368(2) indicates that each day for which the failure to comply continues constitutes a separate offence.

Subsection 368(3) provides that sections 736 and 737 of the *Criminal Code* do not apply in respect of a failure to comply with the tax-inclusive pricing requirements. These sections permit a court to grant conditional or absolute discharges and to suspend or permit intermittent service of sentences, or release an accused, on conditions set out in a probation order.

Subsection 368(4) provides that it is sufficient proof of an offence to establish that it was committed by an employee or agent of the accused whether the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the accused's knowledge or consent and all due diligence was exercised to prevent its commission.

Division XI comes into force on April 7, 1997 except that subsection 366(3), which relates to the price information requirements for national catalogues, comes into force on a day to be fixed by order of the Governor in Council.

Clause 243

Sales of Residential Complexes Other Than by Builder

ETA
Schedule V, Part I, section 2

Section 2 exempts the sale of a residential complex or an addition to a multiple unit residential complex or an interest therein by a person who is not the builder of the complex or addition, unless the person has claimed an input tax credit in respect of the last acquisition of the complex or an improvement to the complex or addition acquired or imported after the last acquisition of the complex.

Section 2 is amended to add a reference to the bringing into a participating province of an improvement since this is another occurrence that could result in tax becoming payable for which an input tax credit may be claimed.

This amendment is effective April 1, 1997.

Clause 244

Sales of Self-built Homes

ETA
Schedule V, Part I, section 3

Section 3 exempts the sale of a self-built home by an individual who has used the dwelling primarily as a place of residence, unless the individual has claimed an input tax credit in respect of the acquisition of the real property or an improvement thereto acquired or imported after the real property was last acquired.

Section 3 is amended to add a reference to the bringing into a participating province of an improvement since this is another occurrence that could result in tax becoming payable for which an input tax credit may be claimed.

This amendment is effective on April 1, 1997.

Clause 245

Self-built Single Unit Residential Complexes and Residential Condominium Units

ETA
Schedule V, Part I, paragraph 4(*d*)

Paragraph 4(*d*) ensures that the sale of a single unit residential complex or residential condominium unit is not exempt under section 4 if the builder claimed an input tax credit in respect of the last acquisition of the complex or unit or an improvement thereto acquired or imported by the builder after the complex or unit was last acquired by the builder.

Paragraph 4(*d*) is amended to also refer to an improvement brought into a participating province. As a result, the exemption under section 4 will likewise not apply where an input tax credit has been claimed in respect of an improvement to the complex or unit brought into a participating province after the last acquisition of the complex or unit.

This amendment is effective April 1, 1997.

Clause 246

Self-built Multiple Unit Residential Complexes

ETA
Schedule V, Part I, paragraph 5(*d*)

Paragraph 5(*d*) ensures that the sale of a multiple unit residential complex or an addition thereto is not exempt under section 5 if the builder claimed an input tax credit in respect of the last acquisition of the complex or addition or an improvement thereto acquired or imported after the last acquisition of the complex or addition.

Paragraph 5(*d*) is amended to also refer to an improvement brought into a participating province. As a result, the exemption under section 5 will likewise not apply where an input tax credit has been claimed in respect of an improvement to the complex or addition brought into a participating province after the last acquisition of the complex or addition.

This amendment is effective on April 1, 1997.

Clause 247

Residential Trailer Parks.

ETA
Schedule V, Part I, section 5.3

Section 5.3 exempts the supply of land that is a residential trailer park or an addition thereto provided that certain requirements are satisfied. One of the requirements is that the person supplying the park did not claim an input tax credit in respect of the last acquisition of the park or addition, or in respect of an improvement to the park or additional area acquired or imported after the last acquisition of the park or addition.

Section 5.3 is amended to also refer to an improvement brought into a participating province. As a result, the exemption under section 5.3 will likewise not apply where an input tax credit has been claimed in respect of an improvement to the park brought into a participating province after the last acquisition of the park.

An exception to this rule applies where the input tax credit was claimed in respect of an improvement to an additional area that was acquired, imported or brought into a participating province before the additional area was last acquired by the person claiming the credit (i.e., before self-assessment was required).

This amendment is effective April 1, 1997.

Clause 248

Long-term Residential Rents

ETA
Schedule V, Part I, paragraph 6(*a*)

Paragraph 6(*a*) of Part I of Schedule V exempts supplies by way of lease, licence or similar arrangement of a residential complex or residential unit under which continuous occupancy is provided for a period of at least one month. This amendment adds the phrase "under the arrangement" to paragraph 6(*a*), and is consequential to the addition of new subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each lease interval period (see commentary on clause 155). The amendment to paragraph 6(*a*) clarifies that the period referred to therein is the period of continuous occupancy provided for under the arrangement and not the lease interval as defined in subsection 136.1(1).

This amendment comes into force April 1, 1997.

Clause 249

Residential Leases

ETA
Schedule V, Part I, section 6.1

Section 6.1 exempts certain leases of land or residential buildings to a person who, in turn, leases the property on an exempt basis. The amendment to section 6.1 replaces the reference to existing subsection 136(2.1) with a reference to new subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each lease interval period (see commentary on clause 155).

This amendment comes into force April 1,1997.

Clause 250

Lease of Land for Mobile Home, etc.

ETA
Schedule V, Part I, section 7

Section 7 of Part I of Schedule V exempts certain supplies by way of lease, licence or similar arrangement of land and residential trailer park sites under which continuous possession or use of the land or site is provided for a period of at least one month. The amendments to this section are consequential to the addition of new subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each lease interval period (see commentary on clause 155). The amendments to section 7 clarify that the period referred to therein is the period of continuous possession or use provided for under the arrangement as opposed to the lease interval period.

This amendment comes into force on April 1, 1997.

Clause 251

Sale of Parking Space

ETA
Schedule V, Part I, section 8

Section 8 of Part I of Schedule V exempts the sale of a parking space in a condominium complex provided certain requirements are satisfied. Existing paragraph 8(*b*) provides that one of the conditions for exemption is that the supplier did not claim an input tax credit in respect of the acquisition or importation of an improvement to the space after purchasing it. Paragraph 8(*b*) is amended to refer to an input tax credit in respect of an improvement as opposed to "the acquisition or importation" of an improvement. The amended wording thus also encompasses an input tax credit in respect of an improvement brought into a participating province.

This amendment comes into force on April 1, 1997.

Clause 252

Lease of Parking Space

ETA
Schedule V, Part I, section 8.1

Section 8.1 of Part I of Schedule V exempts supplies of residential parking spaces by way of lease, licence or similar arrangement under which any such space is made available throughout a period of a least one month. The amendment to section 8.1 is consequential to the addit[illegible]f subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each lease interval period (see commentary on clause 155). This amendment to Section 8.1 clarifies that the period referred to therein is the period throughout which a parking space is made available as provided for under the arrangement as opposed to the lease interval.

This amendment comes into force on April 1, 1997.

Clause 253

ETA
Schedule VI, Part VII, paragraph 1(2)(*a*)

Subsection 1(2) of Part VII of Schedule VI provides rules designed to treat all interline freight settlements between carriers supplying services that are included in a continuous freight movement (within the meaning of that Part) as being payments for services supplied to each other, and not payments made by the shipper or consignee of the property being transported.

Existing paragraph 1(2)(*a*) deems the carrier that receives payment from the shipper or consignee to have supplied to the shipper or consignee all the freight transportation services in respect of the continuous freight movement. The amendment to paragraph 1(2)(*a*) provides that the destination of the transportation services deemed to have been supplied is considered to be the same as the destination of the continuous freight movement. The destination is relevant to determining the place at which the supply is considered to be made according to the rules set out in section 5 of Part VI of new Schedule IX and therefore to the determination of the appropriate rate of tax to apply to the supply (i.e., the 7-per-cent GST rate if the supply is considered to be made outside the participating provinces and the 15-per-cent HST rate if the supply is considered to be made in a participating province).

This amendment comes into force on April 1, 1997.

Clause 254

Participating Provinces and Applicable Tax Rates; Place of Supply; Non-taxable Property and Services

ETA
Schedules VIII to X

Clause 254 adds Schedules VIII to X to the Act, each of which is described below.

Schedule VIII Participating Provinces and Applicable Tax Rates

Schedule VIII sets out opposite the name of each participating province under the HST the tax rate for the province. The provincial tax rate in each of the participating provinces of Nova Scotia, New Brunswick and Newfoundland is 8 per cent.

Schedule IX Supply in a Province

Schedule IX sets out rules for determining when a supply is made in a province. The Schedule is divided into the following eight Parts:

Part I – Interpretation

Part II – Tangible Personal Property

Part III – Intangible Personal Property

Part IV – Real Property

Part V – Services

Part VI – Transportation Services

Part VII – Postage

Part VIII – Telecommunication Services

Part IX – Deemed Supplies and Prescribed Supplies

It should be noted that, because of new section 144.1, only supplies made in Canada are considered to be made in a province if they are determined under the rules of Schedule IX to be made in the province.

Schedule IX, Part I Interpretation

Part I defines terms for purposes of Schedule IX and sets out rules of interpretation.

Schedule IX, Part I, section 1 "Lease Interval" and "Place of Negotiation"

Section 1 provides that, in respect of a supply by way of lease, licence or similar arrangement, the term "lease interval" has the same meaning in Schedule IX as in new section 136.1 of the Act. Section 136.1 refers to a lease interval as the period to which a lease or license payment is attributable where a supply of property is made by way of lease, licence or similar arrangement. Also, section 136.1 provides that a supplier is deemed to have made, and the recipient is deemed to have received, a separate supply of the property for each lease interval.

Section 1 also defines "place of negotiation" of a supply for purposes of Schedule IX. The place of negotiation is a factor that is taken into account in determining whether certain supplies are made in or outside a province. The expression refers to the supplier's permanent establishment at which the individual principally involved in negotiating for the supplier the agreement for the supply ordinarily works, or to which the individual ordinarily reports, in the performance of the individual's duties in relation to the activities of the supplier in the course of which the supply is made. "Permanent establishment" is defined in new subsection 132.1(2). The individual principally involved in negotiating the agreement for the supplier may be an employee, partner, officer or other representative of the supplier.

Schedule IX, Part 1, section 2 Floating and Mobile Homes

Section 2 of Part 1 of Schedule IX provides that, for purposes of Schedule IX, a floating home, and a mobile home that is not affixed to land, are each deemed to be tangible personal property and not real property. This deeming is necessary because these homes are defined under subsection 123(1) to be real property for purposes of Part IX of the Act.

Schedule IX, Part 1, section 3 Deemed Delivery or Performance

Section 3 of Part I of Schedule IX ensures that the place of supply rules in this Schedule apply to a supply of property or a service even where the property is never delivered or the service is never performed. Section 3 deems the property to have been delivered or the service to have been performed according to the terms of the agreement for the supply.

Schedule IX, Part 1, section 4 Ordinary Location

This section provides that, for purposes of applying the rules relating to the ordinary location of property at a particular time in determining the place of supply of the property, that ordinary location is deemed to be where the supplier and the recipient mutually agree that the ordinary location of the property is to be at the particular point in time. In other words, the mutual agreement of the supplier and recipient will be determinative even where the property is actually located at a different place at the relevant time than what had been agreed upon. It should be noted that this rule contemplates the possibility of the mutual agreement of the parties changing from time to time. Therefore, even if the original written agreement for a supply of property specified that the property would be located in a non-participating province, the parties might mutually agree subsequent to the signing of the contract that the property would be moved at a particular time to a participating province in which case the latter location would be the "ordinary location" of the property at that particular time.

Schedule IX, Part II Tangible Personal Property

This Part of Schedule IX sets out the place of supply rules for purposes of determining whether a supply of tangible personal property (i.e., goods) that is made in Canada is made in a particular province. A registrant making a taxable supply (other than a zero-rated supply) of tangible personal property in a participating province is required to collect tax at the 15-per-cent HST rate, whereas a registrant making such a taxable supply in a non-participating province is required to collect tax at the 7-per-cent GST rate.

Schedule IX, Part II, section 1 Sales of Tangible Personal Property

Subject to the special rule in section 3 of Part VI of Schedule IX for supplies on board a conveyance, section 1 of Part II of Schedule IX provides that a sale of tangible personal property is made in a province if the supplier delivers the property or makes it available in the province to the recipient of the supply. For example, if a retailer in a participating province sells a stereo to a customer who takes delivery of the stereo in the retailer's store, the supply is regarded as made in the participating province and the retailer is required to collect HST on the sale. If a distributor in a non-participating province sells goods to a retailer in a participating province with terms of delivery f.o.b. the retailer's place of business, the supply is regarded as made in the non-participating province.

For purposes of determining whether tangible personal property is delivered in a province, reference should also be made to section 3 of Part II of Schedule IX, which deems supplies to be delivered in a particular province in certain specified circumstances.

Schedule IX, Part II, section 2 Other Supplies of Goods

Section 2 of Part I of Schedule IX sets out the place of supply rules for supplies otherwise than by way of sale (e.g., rentals or leases) of tangible personal property.

Paragraph 2(*a*) provides that, in the case of a supply of tangible personal property otherwise than by way of sale under an arrangement whereby continuous possession or use of the property is provided for a period of no more than three months, the province in which the supply is made is determined based on where the property is delivered or made available to the recipient of the supply. For example, where an individual rents and takes possession of a video camera in a participating province to use while travelling through several provinces, and the rental agreement is for a one-week period, the supply is regarded as made in that participating province.

Paragraph 2(*b*) applies to a supply of tangible personal property otherwise than by way of sale under an arrangement whereby continuous possession or use of the property is provided for more than three months. Specifically, subparagraph 2(*b*)(i) provides that a supply, in these circumstances, of a "specified motor vehicle", as newly defined in subsection 123(1), is made in a province if that is the province in which the vehicle is required to be registered at the beginning of the lease interval in respect of the supply. "Lease interval" has the same meaning as in new section 136.1 which also provides that a separate supply is deemed to be made for each lease interval. As a result, a supply by way of lease, licence or similar arrangement of a specified motor vehicle under which continuous possession or use is to be provided for more than three months is regarded as made in the province in which the vehicle is required to be registered, under the laws of the province relating to the registration of motor vehicles, at the beginning of each lease interval.

For example, where a car leasing company in a non-participating province leases a car to a person for 24 months, and the vehicle is registered in a participating province, each of the lease payments will be subject to HST provided the car continues to be required to be registered in the participating province at the beginning of each lease interval. If, however, in the middle of the 18th month, the lessee moved to a non-participating province and registered the car in that province, the six remaining monthly lease payments would be subject to tax at the 7-per-cent GST rate. Note that the place of supply of a vehicle rental for a period of three months or less is determined under paragraph 2(*a*).

Subparagraph 2(*b*)(ii) applies to other supplies of tangible personal property by way of lease, licence or similar arrangement where continuous possession or use of the property is provided for more than three months. In these circumstances, the place of supply of the property is based on the ordinary location of the property at the beginning of the lease interval in respect of the supply. Consider a case of a generator leased for a four-year period by a national leasing company to a construction company operating in a participating province. Assume the generator will usually be stored and maintained at the construction company's facilities in the participating province. However, during the second lease interval, the company expands its operations to a non-participating province. The generator is relocated to the company's new facilities in the participating province. In this case, the first two lease payments would be subject to tax at the 15-per-cent HST rate. The lease payment attributable to the third lease interval would be subject to tax at the 7-per-cent GST rate.

It should be noted that section 3 of Part I of Schedule IX provides that, in determining the place of supply of tangible personal property, or a supply of intangible property relating to tangible personal property, where the place of supply depends on where the property is ordinarily located at a particular point in time, the supplier may rely on what the supplier and the recipient mutually agreed would be the ordinary location of the property at the particular point in time.

Schedule IX, Part II, section 3 Deemed Delivery

Under section 3 of Part II of Schedule IX, tangible personal property is regarded, for purposes of this Part, as delivered in a particular province, and not in any other province, where the supplier ships the property, or transfers possession of the property to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the property, to a destination in the particular province that is specified in the contract of carriage.

If, for example, a parts manufacturer in a non-participating province, sells components to an assembler in a participating province and uses its own truck, hires a common carrier, or retains a common carrier on behalf of the assembler, to deliver the components to the assembler, the supply of the parts will be regarded as made in the participating province, even if the terms of delivery under the agreement for the sale were f.o.b. the supplier's place of business. If a parts manufacturer in a participating province sells parts to a purchaser in a non-participating province and uses its own truck, hires a common carrier, or retains a common carrier on behalf of the assembler, to deliver the components to the purchaser, the supply of the parts will be regarded as made in the non-participating province, even if the terms of delivery under the agreement for the sale were f.o.b. the supplier's place of business.

Property is also regarded as having been delivered in a particular province, and not in any other province, if the supplier sends the property by mail or courier to an address in the particular province. For example, if a mail-order company located in a non-participating province sends goods to customers in the participating provinces by placing the goods in the mail for delivery to its customers, the goods are regarded as delivered (and therefore supplied) in those participating provinces and HST will apply.

Schedule IX, Part III Intangible Personal Property

This Part sets out the place of supply rules for purposes of determining whether a supply of intangible personal property (i.e., generally a "right" rather than a physical object) that is made in Canada is made in a particular province. A registrant making a taxable supply (other than a zero-rated supply) of intangible personal property in a participating province is required to collect sales tax at the 15-per-cent HST rate, whereas a registrant who makes such a taxable supply in a non-participating province is required to collect tax at the 7-per-cent GST rate.

Schedule IX, Part III, section 1 Canadian Rights

This section defines "Canadian rights" for purposes of the place of supply rules in sections 2 and 3 of Part III of Schedule IX. A supply made in Canada of intangible personal property may relate to rights exercisable in and outside Canada. "Canadian rights" in respect of intangible personal property refers to that part of the property that can be used in Canada.

Schedule IX, Part III, sections 2 and 3 Intangible Property

Sections 2 and 3 of Part III of Schedule IX set out the rules for determining the province in which a supply of intangible personal property is made. When applying these sections, it is important to note that section 3 is subject to section 2. In other words, section 2 should be considered first. If the supply is considered to be made in a particular province under section 2, then it is not necessary to consider section 3. If the supply is not regarded as made in a particular province under section 2, it is still necessary to consider section 3. If the supply of intangible personal property is not regarded as made in a participating province under either section 2 or 3, the supply is considered to made outside the participating provinces, unless Part IX of the Schedule applies to determine the supply to be made in a participating province in the case of a deemed supply or a prescribed supply.

Sections 2 and 3 of Part III of Schedule IX deal with four categories of supplies of intangible personal property. They include supplies of intangible personal property that relate to:

- real property;
- tangible personal property; or
- services to be performed.

The fourth category is a supply of intangible personal property that does not relate to real property, tangible personal property or services to be performed.

Sections 2 and 3 of Part III are explained below in relation to each of these categories of supplies of intangible personal property.

Reference should also be made to the regulations made under section 3 of Part IX of Schedule IX. For example, among the supplies to be prescribed under these Regulations is a supply of a membership to an individual. Notwithstanding the place of supply rules in sections 2 and 3 of Part III, supplies to individuals of memberships that confer rights exercisable in more than one province, including a participating province, will be regarded as supplied in the province in which the recipient is resident. For purposes of this rule, the residence of the recipient will be regarded as the recipient's mailing address.

Schedule IX, Part III, 2(*a*) and 3(*a*) Intangible Property Relating to Real Property

Paragraphs 2(*a*) and 3(*a*) of Part III apply to a supply of intangible personal property that relates to real property (e.g., an option to purchase real property). If all or substantially all of the real property that is situated in Canada is situated in a particular province, then, pursuant to subparagraph 2(*a*)(i), the supply is regarded as made in that province.

In circumstances not described by subparagraph 2(*a*)(i), subparagraph 2(*a*)(ii) results in the supply being considered to be made in the province in which the place of negotiation of the supply is located provided all or substantially all of the real property that relates to the intangible personal property is not situated outside that province. "Place of negotiation" of a supply is defined in section 1 of Part I of Schedule IX.

If section 2 does not determine the place of supply and the place of negotiation of the supply is in Canada, subparagraph 3(*a*)(i) results in the supply being regarded as made in a participating province if the real property that is situated in Canada is situated primarily in the participating provinces. Specifically, the supply of the intangible personal property is considered to be made in the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated.

In circumstances where section 2 does not determine the place of supply and the place of negotiation of the supply is outside Canada, subparagraph 3(*a*)(ii) results in the supply of the intangible personal property being regarded as made in a participating province if all or substantially all of the real property is located in Canada and the real property that is situated in Canada is situated primarily in the participating provinces. Specifically, the supply of the intangible personal property is made in the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated.

Schedule IX, Part III, 2(*b*) and 3(*b*) Intangibles Relating to Goods

Paragraphs 2(*b*) and 3(*b*) of Part III apply to a supply of intangible personal property that relates to tangible personal property. If all or substantially all of the tangible personal property that is ordinarily located in Canada is ordinarily located in a particular province, then subparagraph 2(*b*)(i) results in the supply of intangible personal property being regarded as made in that province. In circumstances where paragraph 2(*b*)(i) does not determine the place of supply, subparagraph 2(*b*)(ii) results in the supply being considered to be made in the province in which the place of negotiation of the supply is located provided all or substantially all of the tangible personal property to which the intangible personal property relates is not ordinarily located outside that province. "Place of negotiation" of a supply is defined in section 1 of Part I of Schedule IX.

If the circumstances described in section 2 are not met and the place of negotiation of the supply is in Canada, subparagraph 3(*b*)(i) results in the supply being considered to be made in a participating province if the tangible personal property that is ordinarily located in Canada is ordinarily located primarily in the participating provinces. Specifically, the supply of the intangible personal property is made in the participating province in which the greatest proportion of the tangible personal property that is ordinarily located in the participating provinces is ordinarily located.

In circumstances where section 2 does not determine the place of supply and the place of negotiation of the supply is outside Canada, subparagraph 3(*b*)(ii) results in the supply of the intangible personal property being regarded as made in a participating province if all or substantially all of the tangible personal property is ordinarily located in Canada and the tangible personal property that is ordinarily located in Canada is ordinarily located primarily in the participating provinces. Specifically, the supply of the intangible personal property is made in the participating province in which the greatest proportion of the tangible personal property that is ordinarily located in the participating provinces is ordinarily located.

Schedule IX, Part III, 2(*c*) and 3(*c*) Intangibles Relating to Services

Paragraphs 2(*c*) and 3(*c*) of Part III apply to a supply of intangible personal property that relates to services to be performed. If all or substantially all of the services that are to be performed in Canada are to be performed in a particular province, then subparagraph 2(*c*)(i) results in the supply of the intangible personal property being regarded as made in that province.

If the circumstances described in subparagraph 2(*c*)(i) are not met, subparagraph 2(*c*)(ii) results in the supply being considered to be made in the province in which the place of negotiation of the supply is located, provided all or substantially all of the services that relate to the intangible personal property are not to be performed outside that province.

If the circumstances described in section 2 are not met and the place of negotiation of the supply is in Canada, subparagraph 3(*c*)(i) results in the supply being regarded as made in a participating province if the services to be performed in Canada are to be performed primarily in the participating provinces. Specifically, the supply of the intangible personal property is made in the participating province in which the greatest proportion of the services to be performed in the participating provinces are to be performed.

If the circumstances described in section 2 are not met and the place of negotiation of the supply is outside Canada, subparagraph 3(*c*)(ii) results in the supply of the intangible personal property being regarded as made in a participating province if all or substantially all of the services are to be performed in Canada and the services to be performed in Canada are to be performed primarily in the participating provinces. Specifically, the supply of the intangible personal property is made in the participating province in which the greatest proportion of the services to be performed in the participating provinces are to be performed.

Schedule IX, Part III, 2(*d*) and 3(*d*) Other Intangible Property

Paragraphs 2(*d*) and 3(*d*) of Part III apply to a supply of intangible personal property that does not relate to real property, tangible personal property or services to be performed. The concept of "Canadian rights" is relevant to these provisions. The expression is defined in section 1 of Part III of this Schedule as that part of the intangible personal property that can be used in Canada. If all or substantially all of the Canadian rights in respect of the intangible personal property can be used only in a particular province, then subparagraph 2(*d*)(i) results in the supply being regarded as made in that province.

In circumstances not described by subparagraph 2(*d*)(i), subparagraph 2(*d*)(ii) results in the supply being regarded as made in the province in which the place of negotiation of the supply is located, provided the property can be used otherwise than exclusively outside the province. "Place of negotiation" of a supply is defined in section 1 of Part I of Schedule IX.

If section 2 does not determine the place of supply and the place of negotiation of the supply is in Canada, subparagraph 3(*d*)(i) results in the supply being regarded as made in a participating province if the Canadian rights in respect of the intangible personal property cannot be used otherwise than primarily in the participating provinces. Specifically, the supply of the intangible personal property is regarded as made in the participating province in which the greatest proportion of the Canadian rights that can be used only in the participating provinces can be used.

In circumstances not described by section 2 and where the place of negotiation of the supply is outside Canada, subparagraph 3(*d*)(ii) results in the supply of the intangible personal property being regarded as made in a participating province if the property cannot be used otherwise than exclusively in Canada and the property cannot be used otherwise than primarily in the participating provinces. Specifically, the supply of the intangible personal property is made in the participating province in which the greatest proportion of the Canadian rights that can be used only in the participating provinces can be used.

Schedule IX, Part IV Real Property

This Part describes the place of supply rules for purposes of determining whether a supply of real property or a service in relation to real property that is made in Canada is made in a particular province. A registrant who makes a taxable supply (other than a zero-rated supply) of real property or a service in relation to real property in a participating province is required to collect tax at the 15-per-cent HST rate, whereas a registrant who makes such a taxable supply in a non-participating province is required to collect tax at the 7-per-cent GST rate.

Schedule IX, Part IV, section 1 Supply of Real Property

Section 1 of Part IV of Schedule IX provides that a supply of real property is considered to be made in the province in which the real property is situated. Reference should be made to new section 136.2 which provides that where a taxable supply of real property includes the provision of real property situated in a particular province and the provision of real property situated in another province or outside Canada, the provision of the part of the real property that is situated in the particular province and the provision of the part of the real property situated in the other province or outside Canada are each deemed to be separate supplies made for separate consideration.

Schedule IX, Part IV, sections 2 and 3 Services in Relation to Real Property

Sections 2 and 3 of Part IV of Schedule IX set out the rules for determining the province in which a supply of a service in relation to real property is made. When applying sections 2 and 3 of Part IV, it is important to note that section 3 is subject to section 2. In other words, section 2 should be considered first. If the supply is considered to be made in a particular province under section 2, then it is not necessary to consider section 3. If the supply is not regarded as made in a particular province under section 2, it is still necessary to consider section 3. If the supply is not regarded as made in a participating province under either section 2 or 3, the supply is considered to be made outside the participating provinces unless it is determined to be made in a participating province under Part IX of Schedule IX, which applies to deemed supplies and prescribed supplies.

If all or substantially all of real property that is situated in Canada is situated in a particular province, then, pursuant to paragraph 2(*a*), the supply of a service in relation to the real property is regarded as made in that province. In circumstances not described by paragraph 2(*a*), paragraph 2(*b*) results in the supply of the service being considered as made in the province in which the place of negotiation of the supply is located, provided all or substantially all of the real property to which the service relates is not situated outside that province. "Place of negotiation" of a supply is defined in section 1 of Part I of Schedule IX.

If section 2 does not determine the place of supply and the place of negotiation of the supply is in Canada, section 3 results in the supply being regarded as made in a participating province if the real property to which the service relates that is situated in Canada is situated primarily in the participating provinces. Specifically, the supply of the service is regarded as made in the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated.

In circumstances not described by section 2 and where the place of negotiation of the supply is outside Canada, the supply of the service is regarded as made outside the participating provinces provided all or substantially all of the property is not situated in Canada. If all or substantially all of the property is situated in Canada and the real property is situated primarily in the participating provinces, the supply is regarded as made in the participating province in which the greatest proportion of the real property that is situated in the participating provides is situated.

Schedule IX, Part V Services

Part V of Schedule IX sets out the place of supply rules for purposes of determining whether a supply of a service that is made in Canada is made in a particular province.

This Part is subject to special rules for specific kinds of services contained in Part IV and Parts VI to VIII. Part IV includes rules for services in relation to real property. Part VI addresses transportation services. Part VII addresses postage services and Part VIII deals with telecommunication services.

Reference should also be made to Part IX which applies to deemed supplies and prescribed supplies of services. In particular, the regulations under section 3 of Part IX will set out special place of supply rules for specified services. For example, notwithstanding the place of supply rules in sections 2 and 3 of Part V, the regulations will provide that the place of supply of a service supplied by means of a 1-900 telephone call will be determined based on the province in which the call originates. A special rule will also apply to deem a supply by a customs broker of a service of arranging for the release of imported goods to be made in the province in which the port of release is located. Special rules will also apply for certain other services supplied by means of a telecommunications facility and specified services (as announced in the October 23, 1996 Technical Paper) in respect of tangible personal property (such as a repair service) where the recipient delivers the property to the supplier in a participating province and the supplier arranges for the service to be performed in another province.

Schedule IX, Part V, section 1 Definition "Canadian Element"

This section defines the "Canadian element" of a service to be the portion of the service that is performed in Canada. Under section 142 of the Act, a supply of a service may be regarded as made in Canada if a part of the service is performed in Canada. For purposes of the provincial place of supply rules, it is necessary to consider the Canadian portion of such a supply.

Schedule IX, Part V, sections 2 and 3 Supply of a Service

Sections 2 and 3 of Part V of Schedule IX set out the rules for determining the province in which a supply of a service is made. When applying sections 2 and 3 of Part V it is important to keep in mind that section 3 is subject to section 2. In other words, section 2 should be considered first.

If the supply is considered to be made in a particular province under section 2, then it is not necessary to consider section 3. If the supply is not regarded as made in a particular province under section 2, it is necessary to consider section 3. If the supply is not regarded as made in a participating province under either section 2 or 3, the supply is considered to made outside the participating provinces, unless it is determined to be made in a participating province under the rules of Part IX of this Schedule that apply to deemed supplies and prescribed supplies.

Section 2 provides that, subject to Parts IV and VI to VIII of the Schedule, if all or substantially all of the Canadian element of a service (as newly defined in section 1 of this Part) is to be performed in a particular province, the service is regarded as made in that province. In circumstances not described by paragraph 2(*a*), paragraph 2(*b*) results in the supply of the service being regarded as made in the province in which the place of negotiation of the supply is located, provided all or substantially all of the service as not to be performed outside that province. The "place of negotiation" of a supply is defined in section 1 of Part I of Schedule IX.

If section 2 does not determine the place of supply and the place of negotiation of the supply is in Canada, section 3 results in the supply being regarded as made in a participating province if the Canadian element of the service is to be performed primarily in the participating provinces. Specifically, the supply of the service is regarded as made in the participating province in which the greatest proportion of the Canadian element is to be performed.

In circumstances where section 2 does not determine the place of supply and the place of negotiation of the supply is outside Canada, section 3 results in the supply being regarded as made outside the participating provinces unless all or substantially all of the service is to be performed in Canada. If all or substantially all of the service is to be performed in Canada and the service is to be primarily performed in the participating provinces, then the supply is considered made in the participating province in which the greatest proportion of the services to be performed in the participating provinces are to be performed.

Schedule IX, Part VI Transportation Services

This Part sets out the place of supply rules for determining whether a supply of a freight or passenger transportation service that is made in Canada is made in a particular participating province.

In addition, this Part sets out the place of supply rules determining whether a sale of tangible personal property or services (other than a passenger transportation service) on board a conveyance is made in a participating province and whether a supply of transporting an individual's baggage in connection with a passenger transportation service is made in a participating province.

Schedule IX, Part VI, Section 1 Definitions

This section contains definitions of terms used in Part VI of Schedule IX. Several terms, including "continuous journey", "origin", and "termination" have the same meanings as assigned by section 1 of Part VII of Schedule VI.

However, the following terms have been defined specifically for purposes of the place of supply rules relating to transportation services:

"destination"

This term is relevant to the place of supply rules for freight transportation services. "Destination" has been defined as the place specified by the shipper (usually on the bill-of-lading or other shipping documents), where possession of the property is to be transferred to the person who is either the consignee or person to whom the property is addressed.

"freight transportation service"

This term has the meaning assigned by section 1 of Part VII of Schedule VI but does not include a supply of a service described in Part VII of Schedule IX (i.e., a supply of a postage stamp).

"leg" of a journey

This expression is used in section 3 of this Part. "Leg" of a journey on a conveyance refers to the part of the journey that begins where any passenger either embarks or disembarks the conveyance or where there is a stopover (i.e., refuelling or servicing) and ends at the place where the conveyance next stops.

"stopover"

Generally, this term has the same meaning as in section 1 of Part VII of Schedule VI. However, for purposes of the place of supply rules, a stopover on a journey that does not include air transportation and the origin and termination of which is in Canada does not include a stop outside Canada at which the passengers are scheduled to be outside Canada for an uninterrupted period of less than 24 hours. For example, if an individual takes a day shopping bus tour from New Brunswick to Maine, the place in Maine where the individuals disembark the bus will not be considered a stopover since the individuals are not scheduled to be outside Canada for more than 24 hours.

Schedule IX, Part VI, section 2 Passenger Transportation Services

Section 2 of Part VI of Schedule IX sets out the place of supply rules for passenger transportation services.

Section 2 provides that, where a ticket or voucher issued for the first passenger transportation service that is part of a continuous journey specifies an origin of the journey that is within a participating province and the termination and all stopovers in respect of the continuous journey are in Canada, the place of supply is in that particular participating province. For example, if a return rail ticket has a routing Halifax-Ottawa-Halifax, the place of supply would be Halifax due to the fact that the origin specified in the ticket is in a participating province and the termination and all stopovers in respect of the journey are in Canada. Therefore, the consideration for the supply of the rail ticket would be subject to sales tax at the 15-per-cent HST rate.

Section 2 provides that, where the origin of the passenger transportation service is not so specified, the place of supply will be the place of negotiation of the supply. For example, if a bus pass which entitles the passenger to unlimited bus travel for 60 days is purchased in Fredericton, New Brunswick but the pass does not specify the origin of the passenger transportation service, the place of supply will be Fredericton and the consideration for the bus pass will be subject to sales tax at the 15-per-cent HST rate.

Schedule IX, Part VI, Section 3 Supplies on Board Conveyance

Section 3 of Part VI of Schedule IX sets out the place of supply rules for supplies of tangible personal property or services delivered or performed on board a conveyance. Specifically, the sale of goods delivered on board a conveyance, or a supply of a service which is wholly performed on board the conveyance, during a leg of a continuous journey that begins and ends in the participating provinces are considered to be made in the participating province in which that leg of the journey begins. The term "leg" of a journey is defined in section 1 of this Part.

For example, a sale of alcoholic beverages served during a leg of a flight that begins in Fredericton, New Brunswick and ends in Halifax, Nova Scotia would be considered to be made in New Brunswick and would be subject to sales tax at the 15-per-cent HST rate.

Schedule IX, Part VI, Section 4 Baggage Charges

Section 4 of Part VI of Schedule IX sets out the place of supply rules for the service of transporting an individual's baggage in connection with a passenger transportation service supplied to the individual. Section 4 provides that, where a person who supplies a passenger transportation service to an individual also supplies a service of transporting that individual's baggage in connection with the passenger transportation service, the place of supply of the service of transporting the individual's baggage is the same as that of the passenger transportation service. Therefore, the excess baggage charge will be subject to sales tax at the 15-per-cent HST rate if the passenger transportation service is subject to the HST.

Schedule IX, Part VI, Section 5 Freight Transportation Services

Section 5 of Part VI of Schedule IX sets out the place of supply rules for freight transportation services. A supply of a freight transportation service is regarded as made in a participating province if the destination of the freight transportation service is in a participating province. The term "destination" is defined in section 1 of this Part.

Schedule IX, Part VII Postage

This Part provides that the supply by Canada Post Corporation of a service of delivering tangible personal property by mail when payment for the supply is evidenced by a stamp, postage impression or postage meter impression by Canada Post Corporation is made in a participating province if the place of negotiation of the supply is in the participating province. The place of negotiation is defined in section 1 of Part I of Schedule IX. In other words, if a postage stamp is purchased within a participating province, the consideration for the stamp would be subject to sales tax at the 15-per-cent HST rate.

However, if the consideration for the supply is $5 or more and the address to which the property is sent is not in a participating province, the supply of the service is not regarded as made in a participating province. Therefore, in this case, the supply of the service will be subject to sales tax at the 7-per-cent GST rate if the mail is sent to a non-participating province.

Schedule IX, Part VIII Telecommunication Services

This Part describes the place of supply rules for supplies of telecommunication services made in Canada.

Schedule IX, Part VIII, section 1 Meaning of "Billing Location"

Section 1 of Part VIII of Schedule IX provides rules for determining when the "billing location" for a telecommunication service is considered to be in a province. The billing location is, in some cases, relevant to the determination of the place of supply of a telecommunication service under section 2 of this Part.

The billing location for a telecommunication service is considered to be in a province if the fee for the service is charged or applied by the telecommunications company to an account of the recipient that relates to telecommunications facilities ordinarily located in that province. The term "telecommunications facility" is newly defined in subsection 123(1).

Where the fee for the service is not charged or applied to an account that the recipient has with the telecommunications company, the billing location is considered to be in a province if the telecommunications facility used to initiate the service is located in that province.

Schedule IX, Part VIII, section 2 Telecommunication Service

Section 2 of Part VIII of Schedule IV sets out the rules for determining when a telecommunication service (other than a service of granting sole access to a telecommunications channel, which is dealt with in section 3 of this Part) is made in a province.

Section 2 provides that, where the telecommunication service consists of making telecommunications facilities available for use, the supply of the service is made in a province if all of the facilities are ordinarily located in the province or, where not all of the facilities are located in the province, the invoice for the supply is sent to an address in the province.

In the case of other telecommunication services (other than those described in section 3 of this Part), the supply is considered to be made in a province when the telecommunication is both emitted and received in that province. Also, a supply is considered to be made in a province when the telecommunication is either emitted or received in the province and the billing location for the supply is in that province. Finally, the supply is considered to be made in a province if the telecommunication is emitted in the province and is received in another province and the billing location for the supply is not in a province in which the telecommunication is emitted or received.

Schedule IX, Part VIII, section 3 Telecommunications Channel

Section 3 applies in the case of a supply of a telecommunication service of granting sole access to a telecommunications channel. The term "telecommunications channel" is defined in new subsection 136.4(1) to mean a telecommunications circuit, line, frequency, channel, partial channel or other means of sending or receiving a telecommunication but does not include a satellite channel.

Section 3 provides that a supply of a service of granting sole access to a telecommunications channel is made in a province if it is deemed under section 136.4 to be made in the province. In effect, a supply of granting sole access to a particular telecommunications channel is divided into separate supplies if telecommunications are to be transmitted between two provinces via the channel. The supplier is deemed to have made a separate supply of the service in each of those provinces as well as in any other provinces in between. The consideration for the deemed supply in each province is calculated based on the distance over which the telecommunication would be transmitted in the province if the telecommunication were transmitted by means of cable and related facilities located in Canada and connecting, in a direct line, the transmitters for receiving and emitting the telecommunications.

Schedule IX, Part IX Deemed Supplies and Prescribed Supplies

Part IX of Schedule IX sets out a number of override rules relating to Schedule IX.

Schedule IX, Part IX, section 1 Deemed Supplies of Property

This section enumerates a number of provisions in the Act generally relating to circumstances in which a supply of property is deemed to have been made, such as where the inventory of a small supplier is deemed to be sold and acquired by the supplier when the supplier becomes a registrant. Section 1 provides that, notwithstanding the rules in any other Part of Schedule IX, a supply of property that is deemed to have been made or received at any time under any of the specified provisions is considered to be made where the property is situated at that time.

Schedule IX, Part IX, section 2 Supplies Deemed to be Made in a Province

Section 2 overrides the rules in any other Part of Schedule IX in the case of supplies of property or services that are deemed to be made in a province under Part IX of the Act or regulations made under Part IX of the Act. For example, new subsection 163(2.1) deems the provincially taxable portion of a tour package in respect of a participating province to be made in that province. This overrides the rules of other Parts of Schedule IX.

Schedule IX, Part IX, section 3 Prescribed Supplies

Section 3 overrides the rules in any other Part of Schedule IX in the case of supplies of property or services that are prescribed to be made in a province. The supplies to be prescribed under this section include certain supplies of memberships and of specified services (see the commentary on the place of supply rules for intangible personal property and services).

Schedule X Non-taxable Property and Services

New Schedule X to the Act lists property and services that are not taxable under new Division IV.1 of Part IX which imposes the provincial component of the HST on a self-assessment basis on certain supplies in respect which the suppliers are not required to collect that provincial component and in respect of certain importations and property brought into a participating province from a non-participating province. Schedule X is added as of April 1, 1997. However reference should be made to the application and transition rules in new section 349 to determine the property and services to which new Schedule X applies.

Schedule X, Part I Non-taxable Goods

Although new subsection 220.05(1) provides for a general requirement to self-assess where tangible personal property is brought into a participating province from a non-participating province, by virtue of subsection 220.05(3), this requirement does not apply in respect of property included in Part I of new Schedule X to the Act. For the most part, this Part provides for relief from the provincial portion of the HST in circumstances in which the GST would be relieved if the goods were imported into Canada. Accordingly, the provisions of Part I of Schedule X mirror many of the existing provisions of Schedule VII of the Act. For example, most of the tariff headings listed in section 1 to Schedule VII have either been cross-referenced in section 1 of Part I of Schedule X or have been paralleled in separate sections in this Part. In addition, the following special provisions ensure that there is no requirement to self-assess in the following situations:

- in most cases where the property is brought into a participating province by a registrant for consumption, use or supply exclusively in commercial activities (section 22);
- to prevent double application of the provincial portion of the HST where it applies under another section (sections 18 and 20); and
- in respect of particular types of property (e.g., specified motor vehicles acquired from a non-registrant – section 24, and prescribed property – section 23)

Schedule X, Part I, section 1 Conveyances, Military Goods, International Publications

This section parallels section 1 of Schedule VII in that it provides for relief from the requirement to self-assess under sections 220.05 and 220.06 in circumstances where the property in question is included in any of tariff headings 98.01 (certain foreign-based conveyances involved in international commercial transportation), 98.10 (certain arms, military stores, munitions and similar goods) and 98.12 (UN or

NATO publications and books received from free lending libraries located abroad and subject to return under Customs supervision).

Schedule X, Part I, section 2 Conveyances Temporarily Brought In

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain conveyances that are temporarily brought into a participating province by a resident of that province. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.02.

Schedule X, Part I, section 3 Conveyances and Baggage Temporarily Brought In

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain conveyances and baggage that are temporarily brought into a participating province by non-residents of the province. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.03.

Schedule X, Part I, section 4 Arms, Military Stores, Munitions

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain military goods that are brought into a participating province by the Canadian Government as replacement of or in exchange for, similar goods loaned to a foreign government. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.11.

Schedule X, Part I, section 5 Charitable Clothing or Books; Photographs

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain goods that are brought into a participating province for charitable purposes, or photographs brought in for purposes other than sale. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.15.

Schedule X, Part I, section 6 Casual Donations and Gifts valued at less than $60

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain donations or gifts of property (other than alcohol, tobacco and advertising products), where the fair market value of the property does not exceed $60. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.16.

Schedule X, Part I, section 7 Convention and Exhibition Goods

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain goods that are brought into a participating province for a period not exceeding six months, where the goods are brought in for purposes of display at certain conventions or exhibitions. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.19.

Schedule X, Part I, section 8 Specified Temporary Importations from Mexico or the United States

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain goods that are brought into a participating province after having been imported on a temporary basis from Mexico or the United States. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff items 9823.60 (goods intended for display or demonstration), 9823.70 (commercial samples), 9823.80 (advertising films) and 9823.90 (conveyances or containers used in the international traffic of goods).

Schedule X, Part I, section 9 Property of Returning Residents

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain goods brought into a participating province by persons who are returning to the province to establish or re-establish permanent residence there for a period of at least one year. In order to qualify for relief, the property in question must have been for the person's personal or household use and must have been owned and in the individual's possession before brought into the participating province. Where the property was owned and possessed for less than 31 days prior to being brought into the participating province, relief will be available only where the person can demonstrate that non-recoverable retail sales tax was paid on the goods in a non-participating province.

It should be noted that relief will not be available under this section for persons who are entering a participating province to reside there as a student or to be employed there on a temporary basis for a period of less than 36 months. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff headings 98.05 and 98.07.

Schedule X, Part I, section 10 Personal and Household Effects of Deceased Persons

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of personal and household effects of a deceased person or such effects received by a person in anticipation of the death of another person, where the property is given as a gift to an individual who is resident in a participating province. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.06.

Schedule X, Part I, section 11 Prizes and Trophies Won Abroad

This section allows a person who is awarded or wins a medal, trophy or other prize (other than a merchantable good, such as an automobile) outside a participating province to bring it into a participating province without the requirement to self-assess tax under

Division IV.1. The relief provided under this section parallels that which is provided for purposes of importations into Canada under section 2 of Schedule VII.

Schedule X, Part I, section 12 Tourist Literature

This section allows tourist literature of governments or other organizations described in the section to be brought into a participating province without a requirement to self-assess tax under Division IV.1 when such literature is for public distribution without charge. The relief provided under this section parallels that which is provided for purposes of importations into Canada under section 3 of Schedule VII.

Schedule X, Part I, section 13 Property Donated to Charities or Public Institutions

This section provides for property that has been donated outside a participating province to be subsequently brought into that province by a charity or public institution without a requirement to self-assess tax under Division IV.1. The relief provided under this section parallels that which is provided for purposes of importations into Canada under section 4 of Schedule VII.

Schedule X, Part I, section 14 Replacement Parts Under Warranty

This section relieves from the tax that would otherwise be required to be self-assessed under Division IV.1 warranty replacement parts sent to an individual in Canada. This relief is provided on the premise that the individual would previously have paid the provincial portion of the HST on the cost of the original parts purchased or brought into the participating province, along with any implicit warranty costs. Taxing the replacement parts provided free under a warranty would effectively result in double taxation. The relief provided under this section parallels that which is provided for purposes of importations into Canada under section 5 of Schedule VII.

Schedule X, Part I, section 15 Zero-rated Goods

This section ensures that certain property the supply of which in Canada is zero-rated is likewise not subject to the provincial portion of the HST under Division IV.1 when the property is brought into a participating province. The relief provided under this section parallels that which is provided for purposes of importations into Canada by virtue of section 6 of Schedule VII.

Schedule X, Part I, section 16 Reusable Containers

This section provides for relief from self-assessment of the tax which would otherwise be payable when certain containers are brought into a participating province in circumstances in which the containers are similar in quantity and quality to containers that previously have been removed from the participating province. The relief provided under this section parallels that which is provided for purposes of importations into Canada under section 9 of Schedule VII.

Schedule X, Part I, section 17 Money or Financial Instruments

This provision confirms, for greater certainty, that such things as stock certificates, bond certificates, promissory notes and money are not taxable under Division IV.1 when brought into a participating province. The relief provided under this section parallels that which is provided for purposes of importations into Canada under section 10 of Schedule VII.

Schedule X, Part I, section 18 Exemption Where Taxable Under Other Provisions

Section 18 ensures that property is not subject to the provincial portion of the HST under section 220.05 or 220.06 where it is subject to the provincial portion of the HST under another charging section. It therefore relieves the requirement for a person to self-assess tax under either of sections 220.05 or 220.06 in circumstances where tax was already payable in respect of a supply of the property under new subsection 165(2) or under new section 218.1. Similar relief from double taxation in respect of certain imported goods is provided under section 20 of Part I of Schedule X. As well, sections 220.05 and 220.06 themselves provide for relief in cases where self-assessment is required under other provisions in Division IV.1.

Schedule X, Part I, section 19 Leases

As a result of this section, there will be no requirement to self-assess tax under Division IV.1 in respect of property brought into a participating province from a non-participating province where the property has been supplied in a non-participating province by way of lease licence or similar arrangement under which continuous possession or use is provided for a period in excess of 3 months. In such circumstances, the place of supply rules in new Schedule IX provide that the supply is considered made where the property is to be ordinarily located as determined at the beginning of the lease interval for that particular supply. (Note that new section 136.1 deems there to be a separate supply for each lease interval or period to which a payment is attributable).

In respect of the lease interval during which the property is brought into a participating province, relief from self-assessment may be provided by either section 18 or section 19 of Part I of Schedule X. Where, according to the place of supply rules, the property was supplied in a non-participating province, the relief from self-assessment will be provided by section 19, provided GST was payable on the supply. Where the property was supplied in a participating province, the requirement to self-assess will be relieved under section 18 Part I, of Schedule X, because tax under subsection 165(2) would have been payable in respect of the supply.

In respect of subsequent lease intervals, the place of supply rules (i.e., the place where the property is ordinarily located at the beginning of the lease interval) will determine whether tax is payable under subsection 165(2).

With respect to leases for a period of 3 months or less, there will be a requirement to self-assess tax under section 220.05 or 220.06 where the property is delivered in a non-participating province and then brought into a participating province during the lease or licence period. However, where the property was delivered in a participating province and is brought into another participating province during the lease or licence period, the requirement to self-assess tax under section 220.05 or 220.06 will be relieved under section 18 of Part I of Schedule X because tax under subsection 165(2) would have applied to the supply.

Schedule X, Part I, section 20 Imported Goods

This section provides relief from the requirement to self-assess tax in the case of certain imported goods that are brought into a participating province. There will be no requirement to self-assess, for example, where the circumstances of the importation were such that the goods were relieved of tax under Schedule VII. Since such goods would also be relieved of the tax imposed under section 212.1, it is appropriate that they bear no tax when they are brought into a participating province.

In addition, in order to avoid double taxation, there will be no requirement to self-assess tax under section 220.05 or 220.06 in cases where goods that have been brought into a participating province have already borne non-recoverable tax under section 212.1.

Schedule X, Part I, section 21 Property Used In, and Removed From, Participating Province

Where a person brings property into a participating province after previously having used the property in a participating province and then removed it, any liability for the provincial portion of the HST would already have arisen before the property was removed from the participating province. As a consequence, section 21 applies to ensure that tax is not payable again, through self-assessment under section 220.05 or 220.06, in these circumstances.

Schedule X, Part I, section 22 Property Acquired for Use Exclusively in Commercial Activity

This section provides that there is no requirement to self-assess tax in circumstances where tangible personal property (other than a specified motor vehicle) is brought into a participating province by a registrant for consumption, use or supply exclusively in the course of commercial activities of the registrant, provided that the registrant's net tax is not determined under the simplified accounting method in section 225.1 for charities or Part IV or V respectively of the *Streamlined Accounting (GST) Regulations*.

Schedule X, Part I, section 23 Prescribed Property

Section 23 provides for relief from self-assessment on prescribed property brought into a participating province, in prescribed circumstances that will be set out in regulations made by the Governor in Council. It is contemplated that regulations developed for purposes of this section will parallel those that apply for purposes of importations into Canada by virtue of section 8 of Schedule VII (i.e., for purposes of certain temporary importations).

Schedule X, Part I, section 24 Motor Vehicles

This section ensures that there will be no requirement to self-assess tax under sections 220.05 or 220.06 in circumstances where a specified motor vehicle is brought into a participating province by a person after having been acquired in a non-participating province in circumstances in which GST was not payable by the person. This results in the same tax treatment as if the vehicle were acquired in the participating province from a person not required to charge tax.

Schedule X, Part I, section 25 Used Mobile or Floating Homes

By virtue of the expanded definition of "tangible personal property" in section 220.01, mobile and floating homes are subject to self-assessment under Division IV.1 when they are brought into a participating province. However, section 25 of Part I of Schedule X ensures that there is no requirement to self-assess tax under section 220.05 or 220.06 where a mobile or floating home is brought into a participating province after having been used or occupied in Canada by any individual as a place of residence. This effectively parallels the relief from tax which would apply to supplies of used floating or mobile homes made in a participating province.

Schedule X, Part I, section 26 Exclusive Products of Direct Sellers

Under the alternate collection method for direct selling organizations, which is provided for in sections 178.3 and 178.4, tax on the direct seller's exclusive products is accounted for at the direct seller or distributor level, based on the suggested retail price of the products. Accordingly, where such a method is in use, independent sales contractors of the direct seller who are not distributors who have elected to do this accounting are not responsible for remitting tax on their sales of the products to consumers. Section 26 of Part I of Schedule X ensures that such independent sales contractors are similarly not required to self-assess tax under Division IV.1 when they bring such products into a participating province at a time when an election to use the alternate collection method is in effect.

Schedule X, Part II, section 1 Exclusive Use in Commercial Activities

This section provides that there is no requirement to self-assess tax under section 220.08 in circumstances where intangible property or a service is acquired by a registrant for consumption, use or supply exclusively in the course of commercial activities of the registrant, provided that the registrant's net tax is not determined under section 225.1 or Part IV or V of the *Streamlined Accounting (GST) Regulations*.

Schedule X, Part II, section 2 Zero-rated Supplies

This section ensures that supplies of intangible personal property or services that are zero-rated for purposes of the tax under Division II of Part IX are likewise not subject to the provincial portion of the HST under Division IV.1.

Schedule X, Part II, section 3 Services in Respect of Goods Removed

This section applies to relieve the requirement to self-assess tax under section 220.08 on a service in respect of tangible personal property that is removed from a participating province within a reasonable time after the service is performed, where the property is not consumed, used or supplied in Canada after the service is performed and before the exportation of the property. The relief provided under this section parallels that which applies for purposes of tax under Division IV by virtue of subparagraph (*a*)(iv) of the definition "imported taxable supply" in section 217.

Schedule X, Part II, section 4 Litigation Services

This section relieves the requirement to self-assess tax under section 220.08 in respect of services rendered in connection with and after the commencement of criminal, civil or administrative litigation conducted outside Canada. This is consistent with the treatment of such services for purposes of the tax under Division IV as a result of the exclusion from the definition "imported taxable services" in subparagraph (*a*)(vi) of that definition.

Schedule X, Part II, section 5 Transportation Services

This section relieves the requirement to self-assess tax under section 220.08 in respect of transportation services. This is consistent with the treatment of such services for purposes of Division IV as a result of the exclusion of such services from the definition "imported taxable services" under subparagraph (*a*)(v) of that definition.

The provincial component of the HST will be imposed on such services only under subsection 165(2) if it is determined, through the application of the place of supply rules in new Schedule IX, that the services have been supplied in a participating province.

Schedule X, Part II, section 6 Telecommunication Services

Section 6 provides a special exception to the requirement to self-assess tax under section 220.08 in the case of telecommunication services. The provincial component of the HST will be imposed on such services only under subsection 165(2) if it is determined, through the application of the place of supply rules in new Schedule IX, that the services have been supplied outside a participating province.

Schedule X, Part II, section 7 Prescribed Supplies

Section 7 provides for relief from the application of the tax under section 220.08 in the case of prescribed supplies acquired in prescribed circumstances, subject to any terms or conditions that may also be prescribed. The regulations to be made by the Governor in Council under this section will address particular circumstances where it is determined to be appropriate to provide for relief from self-assessment in respect of the provincial component of the HST.

Clause 255

ETA
Definition "related convention supplies";
141.01(6)(*b*); 271(*b*); 272(*a*)

The Schedule referred to in clause 255 amends the above-noted provisions in Part IX of the *Excise Tax Act* to replace references to property "acquired or imported" with references to property "acquired, imported or brought into a participating province" since the bringing into a participating province of property is another occurrence that can result in tax becoming payable (under new Division IV.1).

These amendments come into force on April 1, 1997.

Part III

TRANSITIONAL PROVISIONS

Clause 256

Deregistration of Public Service Bodies

Amendments to sections 148 and 148.1 of the *Excise Tax Act*, under clauses 9 and 10 respectively, increase the thresholds for determining which public service bodies qualify as "small suppliers" under the GST and are thereby not required to be registered to collect the tax. These amendments will enable many bodies that are currently registered to request to have their registration cancelled. Clause 150 provides that as long as they make their request within the two-year period commencing on April 23, 1996, they will not be subject to change-of-use rules provided for in section 171 of the Act. In addition, the clause allows public service bodies that have been registered for less than one year to de-register under these circumstances. However, public service bodies who have their registration cancelled within the two-year period will avoid the change-of-use rules only as long as that registration was not as a result of a request made within the same period.

Clause 256 also provides that, since public service bodies that de-register under the specified circumstances would not be required to self-assess tax in respect of property held at the time they de-register, they would not be entitled to claim input tax credits in respect of that property should they subsequently register again for the tax.

Clause 257

Small Supplier Divisions

The small supplier thresholds under Part IX of the *Excise Tax Act* are increased for public service bodies, effective April 23, 1996. This will enable more public service bodies to have their divisions that fall below the threshold be designated as "small supplier divisions" under section 129 of the Act. As such, they would not be required to collect tax on supplies made through the division and would not be entitled to claim input tax credits for inputs used in making those supplies. Clause 257 provides that where this designation occurs within the two-year period commencing on April 23, 1996, the body will avoid the self-assessment rules that normally apply when a division becomes a small supplier division.

This clause also provides that, to the extent that property of the division held at the time of its designation continues to be used in that division, that use will not be considered to be use in a small supplier division. This avoids the application of the usual deeming rule under which property is considered to be used otherwise than in commercial activities simply by virtue of it being used in a small supplier division. For capital property, this ensures that the designation of the division does not cause a deemed change in use of the property. For example, if the new small supplier division's activities were commercial activities and capital property of that division were transferred for use primarily in other commercial activities outside the division, there would not be any change in use. However, actual changes in use will be recognized in the normal manner, such as if property used primarily in a commercial activity of the new small supplier division subsequently began to be used primarily in an exempt activity.

Clause 258

Charities and Change in Use

This clause provides that, where the enactment of an amendment to the *Excise Tax Act* triggers a change in use of property of a charity (as newly defined in subsection 123(1)), and the charity is thereby deemed to have made a supply pursuant to the change-in-use provisions in Part IX of the Act, tax on that supply will be equal to zero. For example, an amendment to Part IX may exempt certain supplies made by a charity. On the day on which the amendment takes effect, the charity will be considered to have ceased or reduced its use of property in a commercial activity to the extent that the property is used in making the newly exempt supply. However, the change-in-use provisions will not result in the charity having to self-assess tax because the amount of such tax will be considered to be zero.

This transitional rule applies only to changes in use that occur as a result of the enactment of an amendment, that is, changes that are triggered on the day the amendment comes into force. Since the change-in-use provisions will still apply to deem the charity to have made and received a supply of the property, the charity will continue to be subject to any changes in use that occur subsequent to the day on which the amendment becomes effective.

Clause 259

Things Sent By Mail

Subsection 334(1) of the *Excise Tax Act* provides that anything sent by first class mail or its equivalent is deemed to be received by the person to whom it was sent on the day it was mailed. Under clause 153, this rule does not apply for the purpose of determining when the returns and rebate applications referred to in the provisions listed in this clause are considered to have been received by the Minister of National Revenue. Therefore, for example, if one of the listed provisions refers to a rebate application that was received by the Minister before April 23, 1996, it is referring to an application actually received at a Revenue Canada office before that day.

Clause 260

Application to Imported Goods

Clause 154 ensures that where an amended or newly enacted provision is to apply to goods imported on or after a particular day, it will also apply to goods accounted for under section 32 of the

Customs Act on or after that day, even if they were physically imported before that day.

Part IV

FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

Clause 261

Definition "sales tax harmonization agreement"

FPFA
2(1)

Subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act* is amended by adding the definition "sales tax harmonization agreement". This term is used in new Part III.1 of the Act, added by clause 262, and in section 40 of that Act, as amended by clause 264. It refers to the agreements, authorized or ratified and confirmed by that new Part, between the Government of Canada and the governments of provinces participating in the Harmonized Sales Tax system.

This new definition applies as of March 28, 1996.

Clauses 262 to 266

Sales Tax Harmonization Agreements

FPFA
8.2 to 8.7; 32; 40

Proposed new Part III.1 of the *Federal-Provincial Fiscal Arrangements Act* provides the authority for federal-provincial agreements respecting the harmonization of sales tax systems, including

- the accounting for, collection, administration and enforcement of the harmonized taxes;

- the sharing of information gathered in the administration and enforcement of Acts imposing taxes or relating to the advertisement of prices in respect of taxable property and services or Acts providing for rebates, refunds or reimbursements of sales taxes;

- the transition to the harmonized tax system;

- payments, and the eligibility for payments, by the Government of Canada to the government of the province in respect of the revenue from, and the transition costs incurred in converting to, the system of taxation contemplated under the agreement and to which the province is entitled under the agreement;

- the payment by the respective governments, and their agents and subservient bodies, of the sales taxes under the harmonized tax system, the accounting for the taxes so paid and the compliance by them with the legislation imposing the tax;

- the enactment, administration and enforcement of tax-inclusive pricing laws in respect of property and services taxable under the harmonized tax system; and

- the administration and enforcement of laws respecting the rebate, refund or reimbursement of sales taxes paid in respect of certain property or services.

Authority is provided for the payment out of the Consolidated Revenue Fund of the portion of the revenues raised from the harmonized system of taxation as is allocable to the province in accordance with the sales tax harmonization agreement, including advances in respect of those amounts.

Authority is also provided for the payment of amounts in respect of rebates, refunds or reimbursements provided for under provincial Acts that are administered federally in accordance with a sales tax harmonization agreement. This would apply to the provincial rebate in respect of printed books and other qualifying publications in the participating provinces of Nova Scotia, New Brunswick and Newfoundland.

Consequential amendments are also made to other provisions of the Act to include a reference where appropriate to the sales tax harmonization agreements.

The consequential amendment to section 32 of the Act respecting payments made to a participating province would apply as of October 1, 1996. The remainder of the amendments to the Act would apply as of March 28, 1996.

PART V

INCOME TAX ACT

Clause 267

Employee Benefits

ITA
6(1)(*e*.1), and 6(7)

Paragraph 6(1)(*e*.1) of the *Income Tax Act* applies where an individual receives a benefit in a taxation year that arises from the provision of property or a service to the individual or person related to the individual and that is required under paragraph 6(1)(*a*) or (*e*) of that Act to be included in computing the income of the individual for that taxation year. Existing paragraph 6(1)(*e*.1) of that Act then requires that, except where the supply of the property or service is a zero-rated or exempt supply under Part IX of the *Excise Tax Act*, an additional amount be added to the income of the individual equal to 7 per cent of the value of the benefit net of any applicable provincial sales tax in respect of the property or service.

Under the revised treatment of employee and shareholder benefits, instead of a separate add-on of a GST component of the income tax benefit, any benefit to be included in income under section 6 is to be determined inclusive of the tax under Part IX of the *Excise Tax Act* paid by the employer or corporation for the property or service which gives rise to the benefit. This is achieved by repealing paragraph 6(1)(*e*.1) and amending subsection 6(7) of the *Income Tax*

Act to provide that, where the cost of purchasing or leasing a property is taken into account in computing a benefit under section 6 of the Act, any tax on the cost or lease payment must be included in the calculation of the benefit. The calculation must include any tax under Part IX of the *Excise Tax Act* or provincial tax actually payable by the employer or corporation as well as such tax that would have been payable but for the fact that the employer or corporation is exempt from the payment of the tax because of the nature of the employer or corporation (e.g., where the employer is a provincial government) or the nature of the use of the property (e.g., if a provincial tax exemption applied to the purchase based on the use of the property).

These amendments apply to the 1996 and subsequent taxation years.

Clause 268

Automobile Benefits to Partners

ITA
12(1)(*y*)

Paragraph 12(1)(*y*) provides for the inclusion in the income of a partner for a taxation year the value of a benefit arising from the partnership making an automobile available to the partner. Such a benefit is calculated in the same manner as a similar employee benefit. This paragraph is amended by deleting the reference to paragraph 6(1)(*e*.1), which provides for the additional inclusion of an amount equal to GST on the benefit. Paragraph 6(1)(*e*.1) is repealed since the benefit under paragraph 6(1)(*e*) is to be determined on a tax-included basis.

This amendment applies to the 1996 and subsequent taxation years.

Clause 269

Shareholder Benefits

ITA
15

Section 15 of the *Income Tax Act* provides that the value of a benefit in respect of an automobile made available to a shareholder is to be determined in the same manner as the value of similar benefits to employees. The section is amended as a consequence of amendments to section 6 of that Act which provide that any benefit to be included in employment income is to be determined inclusive of any tax payable by the employer. Accordingly, subsections 15(1.3) and (1.4), which currently provide that the benefit is to be calculated on a tax-excluded basis with a separate add-on of an amount equal to the GST, are replaced by new subsection 15(1.3) which provides that where the cost to a person of purchasing or leasing a property or service is taken into account in determining an amount required under section 15 to be included in income, that cost shall include any tax payable in respect of the property or service by the person or that would have been payable if the person were not exempt from the payment of the tax.

In keeping with these changes, subsection 15(5) is also amended to reference subsection 6(7) and ensure that the rule requiring the value of the benefit to be calculated on a tax-included basis applies for purposes of the calculation of shareholder benefits under section 15.

These amendments apply to the 1996 and subsequent taxation years.

PART VI

DEBT SERVICING AND REDUCTION ACCOUNT ACT

Clause 270

Payments to Participating Provinces

DSRA
5

Generally, revenues raised from the tax imposed under Part IX of the *Excise Tax Act* are required to be credited to the Debt Servicing and Reduction Account as opposed to the Consolidated Revenue Fund. This amendment provides an exception for the amounts raised from the imposition of the HST that are authorized to be paid to participating provinces under new section 8.4 or 8.5 of the *Federal-Provincial Fiscal Arrangements Act* (see commentary on clause 262) in accordance with Sales Tax Harmonization Agreements entered into between the Government of Canada and the governments of participating provinces.

This amendment comes into force on Royal Assent.

PART VII

AN ACT TO AMEND THE EXCISE TAX ACT

Clause 271

GST Implementation Rules

S.C., 1990, c. 45, section 12

Subsection 12(2) of the Act that implemented the GST sets out the application rules for Part IX of the *Excise Tax Act* under which the GST is imposed. That subsection is amended as a consequence of amendments to section 182 of Part IX (see commentary on clause 32). That section applies tax to any amount that is paid or forfeited or by which a debt or other obligation is reduced or extinguished as a consequence of a breach, modification or termination of an agreement for a taxable supply.

The amendment to the GST application rules ensures that section 182 applies with respect to such amounts paid, forfeited, reduced or extinguished after 1990, despite when the agreement for the supply was entered into. This application rule is not necessary under the existing legislation because existing subsection 182(1) deems a new supply to be made and the transitional rules for the GST specify that the tax applies to any supply deemed to have been made. In contrast, amended subsection 182(1) treats the amount paid or forfeited, or by which the debt or obligation is reduced or extinguished, as consideration for the original supply.

This amendment comes into force on April 24, 1996.

PART VIII

AN ACT TO AMEND THE EXCISE TAX ACT

Clause 272

Free Supplies

S.C., 1994, c. 9, subsection 4(2)

The coming into force provision for the amendment that added subsection 141.01(4) to Part IX of the *Excise Tax Act* relating to "free supplies" is amended so that the subsection applies, without exception, as of January 1, 1991.

Part IX

INCOME TAX BUDGET AMENDMENT ACT

Clause 273

De Minimis Financial Institutions

S.C., 1996, c. 21, section 69

The *Income Tax Budget Amendment Act*, 1996 contained amendments that had the effect of requiring certain partnerships, among others, to adopt, for income tax purposes, a fiscal year for the partnership's business that coincided with a calendar year, beginning with the 1996 calendar year. Generally, the fiscal year of a partnership for GST purposes is the same as the fiscal year of the business of the partnership for income tax purposes. However, a special transitional rule deferred the change in fiscal year for GST purposes until the 1997 calendar year. For any affected partnership, this resulted in a short fiscal year, for GST purposes, ending on December 31, 1996.

This short year would distort the test under section 149 of the *Excise Tax Act* of whether the partnership is a *de minimis* financial institution throughout its 1997 fiscal year, since that test is based on the preceding taxation year. To address this, section 69 of the *Income Tax Budget Amendment Act* contains a special rule for the purpose of determining if an affected partnership is a *de minimis* financial institution for GST purposes throughout its taxation year beginning on January 1, 1997. Clause 273 amends that special transitional rule to conform to the new structure of section 149, as amended by clause 11. There is no substantive change in the transitional rule itself.